




STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

PAT MCCRORY  
GOVERNOR

NICHOLAS J. TENNYSON  
ACTING SECRETARY

August 21, 2015

MEMORANDUM TO: Mr. Jerry Jennings, P.E.  
Division 1 Engineer

FROM:  Philip S. Harris, III, P.E., Manager  
Natural Environment Section  
Project Development and Environmental Analysis Unit

SUBJECT: Short Term Improvements on NC12 over New Inlet Breach  
– Pea Island, Dare County; WBS 32635.1.3;  
**TIP B-2500 AB (Phase II)**

Attached are the US Army Corps of Engineers Section 404 Nationwide Permit, N.C. Division of Water Resources (NC DWR) Water Quality Certification, and CAMA Permit. All environmental permits have been received for the construction of this project.

A copy of this permit package will be posted on the NCDOT website at:  
<https://connect.ncdot.gov/resources/Environmental/Pages/default.aspx>  
*Quick Links>Permit Documents> Issued Permits.*

cc: w/o attachment (see website for attachments):

Mr. Randy Garris, P.E. State Contract Officer  
Mr. Clay Willis, Division Environmental Officer  
Dr. Majed Al-Ghandour, P.E., Programming and TIP  
Mr. Clarence Coleman, P.E., FHWA  
Mr. Roger Thomas, P.E., Roadway Design  
Mr. Robert Memory, Utilities Unit  
Mr. Jay Twisdale, P.E., Hydraulics  
Mr. Tom Koch, P.E., Structure Design  
Mr. Mark Staley, Roadside Environmental  
Mr. Ron Hancock, P.E., State Roadway Construction Engineer  
Mr. Mike Robinson, P.E., State Bridge Construction Engineer  
Mr. Rob Hanson, P.E., PDEA Eastern Section

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**LOCATION:**  
CENTURY CENTER, BUILDING A  
1000 BIRCH RIDGE DRIVE  
RALEIGH NC 27610

# PROJECT COMMITMENTS

T.I.P. Number B-2500 Phase I  
Replacement of the Herbert C. Bonner Bridge (Bridge No. 11) on NC 12 over Oregon Inlet  
Dare County  
Federal-Aid No. BRS-2358(15)  
WBS Element 32635.1.3

*and*

T.I.P. Number B-2500 AB (Phase II)  
Short Term Improvements on NC 12 over New Inlet Breach – Pea Island  
Dare County

*If a commitment only applies to one phase, the appropriate phase precedes the commitment.*

## COMMITMENTS FROM PROJECT DEVELOPMENT AND DESIGN

The following text lists the Project Commitments for the Bonner Bridge Replacement Project:

Commitments 7, 20, 25, and 26 were revised in association with Phase IIa studies.

Commitments 25 and 26, as the result of the revision of the 2008 BO resulting from a re-initiation of Formal Section 7 Consultation with USFWS.

Commitment 29 was added as a result of agreements made at Concurrence Point 4A.

Commitments 30 and 31 were added to mitigate Pea Island National Wildlife Refuge facility impacts.

All other commitments developed during the project development and design process are the same as presented in the 2010 ROD.

### **Highway Design Branch and Technical Services Division**

1. **(Phase 1)** Navigation Span Location. One navigation zone will be built to serve boats passing through Oregon Inlet. The location of the zone will be determined in coordination with the US Army Corps of Engineers (USACE).
2. Bicycle Accommodations. The Cape Hatteras National Seashore (Seashore) management plan supports the use of bicycles along NC 12. All bridges associated with the detailed study alternatives (including the Selected Alternative[s]) will have 8-foot (2.4-meter) wide shoulders that will be safer for bicycle and pedestrian traffic than Bonner Bridge's 2-foot (0.6-meter) wide shoulders. In addition, a bicycle- safe bridge rail on the bridges also will provide increased safety for bicyclists. New roadway will have 4-foot (1.2-meter) paved shoulders, which will be safer for use by bicycle and pedestrian traffic than the existing NC 12's unpaved shoulders.

## **Highway Design Branch and Division 1**

3. Use of Work Bridges. During construction of the project, steps taken to minimize turbidity (when possible and practicable) will include the use of work bridges (rather than barges, which would require dredging) for movement of construction equipment in shallow areas where submerged aquatic vegetation (SAV) is present. If SAV is in waters deep enough to float a barge without dredging, the use of a work bridge will not be necessary. Work bridges also will be used to carry construction equipment over intertidal marsh areas (black needlerush and smooth cordgrass). Dredging generally will only be used in depths less than 6 feet (1.8 meters) where SAV is not present. Work bridges will be used to cross SAVs. Neither dredging nor haul roads will be used in SAVs.
4. Sedimentation and Erosion Control. All waters in the project area are classified as SA waters (Class A salt waters) with a supplemental classification of High Quality Waters (HQW). The most stringent application of the Best Management Practices (BMPs) is expected where highway projects affect receiving waters of special designation, such as HQW. Also, impacts to adjacent areas of SAV and/or wetlands should be minimized. Therefore, sedimentation and erosion control measures shall adhere to the Design Standards in Sensitive Watersheds [15A NCAC 04B.0124 (b)- (e)]. Prior to construction, the design-build contractor will submit the proposed sediment and erosion control plans for each stage of construction to the North Carolina Department of Transportation (NCDOT) and permitting agencies for review.
5. Pile Placement. Bridge piles in open water will be jetted to the tip elevation (depth of the tip of the pile). Bridge piles over land will be jetted or driven. Potential damage to wetlands, SAV, and Oregon Inlet from jetting spoils will be minimized to the extent practicable.
6. **(Phase I)** Use of Bridge Demolition Debris for an Artificial Reef. NCDOT will work with the North Carolina Department of Environment and Natural Resources, Division of Marine Fisheries (NCDENR-DMF) to accommodate this desire during demolition planning. Coordination also will be conducted with the National Marine Fisheries Service (NMFS) in association with their regulation of several protected species.
7. **(Phase I)** Oregon Inlet Fishing Access (revised). This commitment was revised as a result of ongoing Section 7 coordination with NMFS. NCDOT will install “no fishing” signs to not allow fishing on the catwalks during construction to satisfy NMFS concerns, and for safety reasons. If and when a decision is made to allow fishing on the remnant of the existing Bonner Bridge, FHWA will initiate Section 7 consultation with NMFS prior to the “no fishing” signs being removed.

## **Highway Design Branch, Project Development and Environmental Analysis Unit, and Division 1**

8. Design Coordination. NCDOT will invite NPS and USFWS, as well as the other agencies represented on the project’s National Environmental Policy Act/Section 404 of the Clean Water Act (NEPA/Section 404) Merger Team (a full list of agencies on the Merger Team is shown on page 8-6 of the 2008 FEIS), to participate in the development of project design and mitigation strategies as a part of the permit application process for each phase of the project.

9. **(Phase I) Dredging.** To avoid construction impacts to protected turtles, NCDOT's contractor will use pipeline or clamshell dredging. A hopper dredge will not be used for bridge construction or Bonner Bridge demolition.
10. **(Phase I) Disposal of Dredged Material.** Prior to construction, during the permit preparation process, FHWA and NCDOT will work with appropriate environmental resource and regulatory agencies to identify the characteristics of dredged material from bridge construction in open water and develop a disposal plan that will minimize harm to natural resources. The appropriate location for dredged material disposal will be determined based on the character of the materials dredged, the availability of disposal sites, and coastal conditions near the time of construction. In addition, as noted in Commitment 25c, the terms and conditions outlined in the Biological and Conference Opinions (USFWS, 2008) related to piping plovers specify that "all dredge spoil excavated for construction barge access must be used to augment either existing dredge-material islands or to create new dredge-material islands for use by foraging plovers. This must be accomplished as per the specifications of the North Carolina Wildlife Resources Commission."
11. **Night-time Construction.** Because construction activities could occur 24-hours-a-day, construction areas could be lit to daylight conditions at night. NCDOT will work with NCDENR-DMF, NMFS, NPS, and USFWS to determine other areas near project construction where night lighting will need to be avoided or limited. Night lighting also will not be used close to areas where people sleep, including the campground at the northern end of the project area and the Rodanthe area at the southern end. Night lighting also will meet the requirements specified to protect sea turtles contained within Commitment 26.a.
12. **Manatee Protection.** Construction contracts will require compliance with USFWS's Guidelines for Avoiding Impacts to the West Indian Manatee: Precautionary Measures for Construction Activities in North Carolina Waters (June 2003).
13. **Sea Turtle and Smalltooth Sawfish Protection.** NCDOT will comply with NMFS's March 23, 2006, Sea Turtle and Smalltooth Sawfish Construction Conditions (NMFS, 2006) that restrict in-water construction-related activities when these protected species are observed in the project area. However, NMFS and NCDOT agree that bridge construction or demolition activities do not need to stop when a protected species is sighted in the proximity of construction if the construction activities are not in the water. The in-water moratorium prohibits pile installation and removal and activities associated with bridge construction and demolition when listed species are present in the water, but does not restrict terrestrial activity.
14. **(Phase I) Terminal Groin Removal.** NCDOT will apply for a permit to retain the groin to protect the south end of the Oregon Inlet bridge. Construction will not be authorized by FHWA prior to issuance of the terminal groin permit.

*The permit to retain the terminal groin was received from USFWS on August 9, 2012.*

15. **Archaeological Resources Discovered During Construction.** If any historic archaeological resources (e.g., historic watercraft) are encountered in the area west of Bodie Island during construction, construction work affecting the resource will cease immediately until the resource can be identified and assessed for National Register of Historic Places eligibility.

16. Construction of Future Phases. In phasing the construction of the Parallel Bridge Corridor alternatives (including the Selected Alternative[s]), it is NCDOT's intent to place a high priority on the monitoring and need for implementation of improvements in the three potential hot spot areas. This intent recognizes the need to build in the Rodanthe 'S' Curves, Sandbag Area, and Canal Zone hot spots. Final phasing decisions will be developed through interagency collaboration and under the requirements of NEPA as project area conditions warrant.
17. Monitoring Program. NCDOT considers the 2060 high erosion shoreline a reasonable assumption for current planning purposes, but also recognizes that decisions related to implementation of future phases and the specific location of future phases will likely need to evolve with actual geomorphological change relative to the NC 12 easement. With this in mind, NCDOT will implement a monitoring and vulnerability forecasting program on Hatteras Island in the project area, as described in Section 3.3.2 of the 2010 ROD.
18. Breach Response-Related Data Gathering Program. Recognizing the possibility that a breach could occur at the southern part of the Refuge prior to completion of Phase II and that four other locations exist in the project area that are geologically susceptible to a breach, NCDOT will conduct a breach response-related data gathering program focusing on the southern end of the Refuge.
19. Reduce the Potential Impacts from NC 12 Maintenance Prior to the Completion of Each Phase. Recognizing that storm-related NC 12 maintenance will occur before completion of future phases, particularly before the implementation of improvements in the three hot spot areas, NCDOT will continue to work with the Refuge to reduce potential impacts to the Refuge and NC 12 resulting from NC 12 storm-related maintenance.
20. Atlantic and Shortnose Sturgeon (revised). Conservation measures to protect shortnose sturgeon will include no hopper dredging and measures to minimize habitat degradation. Such measures will include Best Management Practices (BMPs) involving use, storage, and disposal of construction/demolition materials to minimize short-term turbidity or water quality degradation during over-water construction in Oregon Inlet and during periodic maintenance. Construction and demolition activities associated with Phase I of the project will be completed as quickly as possible in order to minimize deterring spawning sturgeon from entering Oregon Inlet. In addition, the project will incorporate BMPs to reduce habitat degradation from stormwater runoff pollution. The same conservation measures will be applied to the Atlantic sturgeon.

**Highway Design Branch, Project Development and Environmental Analysis Unit, Division 1, Right-of-Way Branch, and Technical Services Division**

21. Utilities. Project development and construction activities will be coordinated with utility providers in the project area in order to prevent interruption of local utility services. The following utility providers currently serve the project area: Dare County (water service); Sprint Communications (telephone service); Charter Communications (cable television service); and Cape Hatteras Electric Membership Association (electric power service).

**Highway Design Branch, Project Development and Environmental Analysis Unit, Division 1, and Geotechnical Unit**

22. Use of Explosives During Construction. The use of explosives during construction is not anticipated. If explosives were needed to remove Bonner Bridge's piles, NCDOT will coordinate with the appropriate environmental resource and regulatory agencies to develop a blasting program that will minimize adverse effects to the natural environment.

**Project Development and Environmental Analysis Unit**

23. Programmatic Agreement. As per the requirements of Section 106 of the National Historic Preservation Act of 1966, FHWA, the North Carolina State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and NCDOT, along with the consulting parties (Dare County, the North Carolina Aquarium Society, USFWS, NPS, and the Chicamacomico Historical Association), developed a Programmatic Agreement (PA) stipulating measures that FHWA will ensure are carried out during the design and construction of the Selected Alternative to mitigate adverse impacts to the historic cultural resources. The final PA (see Appendix D of the Phase IIa EA) was signed by the signatory agencies on November 15, 2010 and amended in August 2013 (see Appendix E of the B-2500 A ROD). NCDOT will carry out the stipulations in this agreement.
24. Seabeach Amaranth. Since the favored habitat of the seabeach amaranth is highly ephemeral, a survey of the project area will be conducted for the habitat of this species at least one year prior to initiating bridge construction activities. It will occur as needed for each construction phase.

**Highway Design Branch, Project Development and Environmental Analysis Unit, Division 1, and Bridge Management Unit**

25. Piping Plover (revised). NCDOT will implement the following nondiscretionary measures that include the terms and conditions outlined in the Biological and Conference Opinions (USFWS, 2008):
- a. All construction equipment and personnel must avoid all bird closure areas within the Seashore and Refuge.
- All future routine maintenance activities of bridge structures that will occur within or adjacent to current or future plover nesting areas must occur outside the nesting season (April 1 to July 15).
- All future repair work on bridge structures that will occur within or adjacent to current or future plover nesting areas must occur outside the nesting season (April 1 to July 15) unless emergency or human safety considerations require otherwise. In this event, the area must be surveyed for nesting plovers and avoided to the extent possible.
- b. During the construction of Phases II, III and IV of the Phased Approach/Rodanthe Bridge Alternative (if it is implemented under the NC 12 Transportation Management Plan [Selected Alternative]), keep all construction equipment and activity within the existing right-of-way unless granted approval by the US Fish and Wildlife Service through a

revised protected species Biological Opinion. Do not moor any construction barges within 300 feet (91.4 meters) of the following islands: Green Island, Wells Island, Parnell Island, Island MN, Island C, the small unnamed island immediately east of Island C, Island D, and Island G (see Figure 1 in the Biological and Conference Opinions in Appendix E of the 2008 FEIS).

- c. All dredge spoil excavated for construction barge access must be used to augment either existing dredge-material islands or to create new dredge-material islands for use by foraging plovers. This must be accomplished as per the specifications of the North Carolina Wildlife Resources Commission. If the dredge material is used outside the current defined action area, the action area is assumed to be expanded to cover the beneficial placement of the material.
  - d. To the maximum extent practical, while ensuring the safety of the traveling public, limit or avoid the use of road signs or other potential predator perches adjacent to plover nesting or foraging areas. Where signs or other structures are necessary, determine if alternative designs would be less conducive for perching on by avian predators (gulls, crows, grackles, hawks, etc.). For example, minimize or avoid the use of large cantilever signs in favor of smaller and shorter designs.
26. Sea Turtles (green sea turtle, leatherback sea turtle, and loggerhead sea turtle) (revised). NCDOT will implement the following nondiscretionary measures that include the terms and conditions outlined in the Biological and Conference Opinions (USFWS, 2008):
- a. All construction equipment and personnel must avoid all marked sea turtle nests. Construction material and equipment staging areas must not be located seaward of the artificial dune. All future routine maintenance activities of bridge structures that will occur within or adjacent to current or future sea turtle nesting habitat, and which will require vehicles or equipment on the beach or the use of night lighting (excluding navigation lights required by the US Coast Guard), must occur outside the nesting season (May 1 to November 15).  
  
All future repair work of bridge structures that will occur within or adjacent to current or future sea turtle nesting habitat, and which will require vehicles or equipment on the beach or the use of night lighting (excluding navigation lights required by the US Coast Guard) must occur outside the nesting season (May 1 to November 15) unless emergency or human safety considerations require otherwise. In this event, the area must be surveyed for sea turtle nests and avoided to the extent possible.
  - b. Provide an opportunity for USFWS or a USFWS designee to educate construction contractor managers, supervisors, foremen and other key personnel and resident NCDOT personnel with oversight duties (division engineer, resident engineer, division environmental officer, etc.) as to adverse effects of artificial lighting on nesting sea turtles and hatchlings, and to the importance of minimizing those effects.
  - c. During turtle nesting season (May 1 to November 15), use the minimum number and the lowest wattage lights that are necessary for construction. During turtle nesting season, portable construction lighting must be amber- colored LED lights with a predominant

- wavelength of approximately 650 nanometers (preferred) or low pressure sodium-vapor type (with USFWS approval). During turtle nesting season, utilize directional shields on all portable construction lights, and avoid directly illuminating the turtle nesting beach at night. During turtle nesting season, all portable construction lights must be mounted as low to the ground as possible. During turtle nesting season, turn off all lights when not needed.
- d. For Phases II, III, and IV if developed as defined by the Phased Approach/ Rodanthe Bridge Alternative (if it is implemented under the NC 12 Transportation Management Plan [Selected]), on the ocean side, design the bridge structure in a manner which will shield the beach on the east side from direct light emanating from passenger vehicle headlights. For the small portion of Phase I over land on Hatteras Island, retrofit the bridge structure at the time that Phase II connects with Phase I. The specific design of the bridge will be developed in consultation with USFWS prior to re-evaluation of the environmental document for Phase II.
  - e. Avoid retrofitting the bridges and approach roads with permanent light fixtures in the future (excluding navigation lights required by the US Coast Guard). In addition, NCDOT does not anticipate the use of explosives during construction or demolition of the existing bridge. NCDOT's contractor will use pipeline or clamshell dredging, rather than a hopper dredge to minimize effects to sea turtles. No permanent light fixtures will be installed on the bridge or the approaches (with the exception of navigation lights as required by the US Coast Guard).

#### **Photogrammetry Unit and Project Development and Environmental Analysis Unit**

- 27. Submerged Aquatic Vegetation (SAV) Survey. The dynamic nature of the area around Oregon Inlet and the new Pea Island inlet (closed as of May 2013) results in ephemeral habitats, particularly in shallow water and shoreline areas. Consequently, NCDOT will obtain new SAV information for use by the contractor in construction access planning. All surveys for SAV in the vicinity of Oregon Inlet will follow protocols endorsed by the National Oceanic and Atmospheric Administration (NOAA) Fisheries.

#### **Project Development and Environmental Analysis Unit**

- 28. Section 4(f). If a later phase of the Parallel Bridge Corridor with NC 12 Transportation Management Plan Alternative (Selected) requires the use of a Section 4(f) property, then FHWA will complete an additional Section 4(f) analysis prior to FHWA's approval of the later phase. The 2009 Revised Final Section 4(f) Evaluation will be reviewed to verify the status of Section 4(f) resources, the effects(s) from the proposed response strategies on the Section 4(f) resource, "use" determinations, and, if necessary, a revised least overall harm analysis.

#### **Project Development and Environmental Analysis Unit and Division 1**

- 29. Storage Shed Use During Construction (new). As agreed at Concurrence Point 4A, NCDOT commits to maintaining the ability of Refuge staff to access and use all Refuge facilities during construction of Phase IIa, including the small storage shed located near the planned intake for the third jetting water source.



30. Replacement of Public Parking Lot near Pea Island Inlet (new). Upon completion of construction, the parking lot on the east side of NC 12 will be removed by NCDOT, along with all construction materials, including concrete, asphalt, contaminated soils, and any other material not naturally belonging on the site. NCDOT will construct a replacement parking lot at a new site near the northern terminus of the Phase IIb project per the direction of the USFWS. The site will be selected by the Refuge manager with input from NCDOT upon completion of the Phase IIb project. Upon project completion, the maintenance of the parking lot will be the responsibility of the Refuge.
31. Boat Ramp, Associated Parking, and Access to Them (new). The existing parking lot (New Inlet Parking Lot) and primitive boat access point on the west side of NC 12 will be fully restored upon completion of construction and an access road similar to the one for the parking lot at the Bonner Bridge will be constructed from the southern terminus of the Phase IIb a bridge to the New Inlet Parking Lot within the existing easement to the greatest extent possible. In order to minimize wetland impacts while providing safe ingress and egress from the boat access drive, NCDOT will construct a turnaround on the east side of the existing easement, as well as a small area outside the easement on the west side of the existing easement. Upon project completion, the maintenance of the driveway and turnaround will be the responsibility of USFWS.

## COMMITMENTS FROM PERMITTING

### B-2500AB

*Conditions from 404 Permit issued July 2, 2015:*

#### **Division 1 Construction**

Upon project completion, all temporary fills must be removed and impact areas returned to preconstruction elevations.

*Conditions from CAMA Permit issued July 28, 2015:*

#### **Division 1 Construction**

In accordance with T15A:07H.0306(k), the authorized structures shall be relocated or dismantled when they become imminently threatened by changes in shoreline configuration. The structures shall be relocated or dismantled within two years of the time when they become imminently threatened, and in any case upon their collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structures become imminently threatened, so that the structures are no longer imminently threatened, then they need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under Rule T15A:07H.0308(a)(2).

In accordance with G.S. 113A-115.1(b)(i) and 15A NCAC 07H .0308(a)(1)(H), this major modification authorizes scour protection stones and sheet pile retaining walls that are expressly depicted on the attached workplan drawings. These scour protection stones and sheet pile retaining walls shall be

removed in their entirety once they are no longer necessary.

The placement of scour protection stone around the bridge abutments, and the placement of rock rip rap at the base of the concrete sheet pile walls, shall be limited to the areas indicated on the attached workplan drawings. The scour protection stone and rock riprap shall be free from loose dirt or any pollutant except in trace quantities.

In accordance with the permittee's e-mail dated 6/29/15, the permittee may retain the existing steel sheeting at both existing temporary bridge abutment<sup>8</sup> as well as the existing rock/slope-stabilization sandbags at the south abutment for protective engineering purposes. The existing steel sheeting, rock, and slope-stabilization sandbags shall be removed if and when the new temporary bridge authorized by this Major Modification is removed in the future. However, if the permittee or DCM determine that the existing steel sheeting, rock, and/or slope-stabilization sandbags have become an obstruction before the new temporary bridge authorized by this Major Modification is removed, then the permittee shall coordinate with DCM to examine removal options under a quicker timeframe.

With the exception of the structures specifically stated in Conditions No. 4 and 5 of this Major 1 .. Modification, upon completion of the work authorized by this Major Modification, all temporary structures and all remnant existing structures shall be removed in their entirety and disposed of at an I approved high ground location as soon as practicable.

In accordance with commitments made by the permittee, the development that was previously but no i longer authorized for B-2500 Phase IIA by DCM in modifications of CAMA Permit No 106-12 on f 4/26/13, 10/17/13, and 4/22114, will be removed and restored to natural elevations prior to the completion of TIP No. B-2500AB.

If the Pea Island Breach Site is closed and surface water is not present, timber mats may be used within the same footprint as the area that is approved on the attached workplan drawings for temporary work bridges.

All equipment and associated materials, including any timber mats, located within the Pea Island Breach Site shall be removed within 12 hours of receiving a weather forecast that suggests the Pea Island Breach Site may become inundated with water from the ocean or sound.

Storage of equipment and materials within the Pea Island Breach Site shall be limited to only those items that will be used readily and only for the current tasks at hand.

The permittee shall coordinate with the United States Fish and Wildlife Service (USFWS) staff to determine the specific location of the Site 17 jetting water intake pump and associated piping. DCM shall be notified in writing upon selection of the final location of the Site 17 jetting water intake site.

The permittee shall exercise all available precautions to ensure that the authorized jetting water intake structures and associated equipment do not pose a hazard to navigation.

The jetting water intake piping shall be attached to temporary wooden stakes with guy lines to limit pipe swing in order to ensure the authorized piping does not pose a hazard to navigation. The piping shall also be marked with floating buoys at every 100 ft to clearly identify it in the water.

Jetting intake screens shall be installed to minimize impacts to fish species. The intake screens shall be inspected and serviced daily during periods when jetting operations are taking place

The jetting water intake pumps shall not be operated if adjacent water levels fall 2.0 feet below the normal water level elevation.

The permittee shall continue to coordinate with appropriate resource agencies to identify and implement additional practicable methods to minimize impacts to fish species from the water intakes during jetting.

In accordance with commitments made by the permittee, all jetting that occurs within the Pea Island Breach Site will occur at ebb tide.

In accordance with commitments made by the permittee, all jetting spoils shall be disposed of within the 100-foot transportation easement within the Pea Island National Wildlife Refuge (PINWR) unless the PINWR accepts the material for Refuge use. Jetting spoils may also be disposed of at an approved upland disposal site.

All reasonable efforts shall be made to contain jetting spoils and keep them from entering wetlands or areas containing submerged aquatic vegetation.

Pilings from the existing temporary bridge and any temporary work bridges shall be removed in their entirety, except that in the event that a bridge piling breaks during removal and cannot be removed in its entirety, DCM shall be notified to determine an appropriate course of action.

According to the permittee, three existing test piles were previously installed during geotechnical investigations, and were designed to remain as permanent features of TIP No. B-2500 Phase IIA. Due to the depth and size of these three existing test piles, as well as safety concerns to the traveling public and practicability, the permittee has stated that these three existing test piles cannot be removed in their entirety at this time. Therefore, in accordance with commitments made by the permittee, the permittee shall cut the piles 1-foot below ground or deeper if groundwater allows. At some point in the future, if the permittee or DCM determines that the remaining portions of the piles have become an obstruction, the permittee shall coordinate with DCM to examine removal options of the exposed portions.

The permittee shall include the N.C. Wildlife Resources Commission (WRC) when it works with other appropriate resource agencies to determine other areas near project construction where night lighting will need to be avoided or limited, as committed to by the permittee in Project Commitment #11 of the Environmental Assessment dated 2/12/13.

This Major Modification shall be attached to the original of Permit No. 106-12, which was issued on 9/19/12, and copies of all documents shall be readily available on site when a Division representative inspects the project for compliance.

The permittee shall provide the public with adequate notice that access to the existing public boat ramp and public parking lot approximately 3,100 feet south of the Pea Island Breach Site will be closed during construction. The notice shall include an estimate of the amount of time that access to the public boat ramp will be closed.

The new temporary bridge shall maintain the present height of the existing temporary bridge, approximately 15 feet above the mean high water elevation.

### **PDEA Natural Environment Section**

Due to the possibility that compaction due to temporary roadway fill, jetting intake pumps and pipes, hand clearing, and/or other site alterations might prevent the temporary Coastal Wetland impact areas from re-attaining pre-project functions, the permittee shall provide an annual update on the Coastal Wetland areas temporarily impacted by the TIP No. B-2500 Phase IIA and TIP No. B-2500AB projects. This annual update shall consist of photographs and a brief written report on the progress of these temporarily impacted areas in re-attaining their pre-project functions. Within three years after completion of TIP No. B-2500AB, the permittee shall hold an agency field meeting with DCM to determine if the Coastal Wetland areas temporarily impacted by this project have re-attained pre-project functions. If at the end of three years DCM determines that the Coastal Wetland areas temporarily impacted by the project have not re-attained pre-project functions, DCM will determine whether compensatory mitigation shall be required.

### **Division 1 Construction Unit and PDEA Natural Environment Section**

In accordance with commitments made by the permittee, the discretionary measures for the piping plover and three species of sea turtles that include the terms and conditions outlined in the July 10, 2008 USFWS Biological and Conference Opinions shall be implemented. Those conditions are listed below:

Avoid disturbing nesting piping plovers.

To the extent possible, avoid disturbing foraging and roosting plovers.

To minimize the effect of harassment on foraging plovers, provide alternative foraging areas.

Avoid or minimize opportunities for avian predator perches.

Avoid disturbing nesting sea turtles, nests and hatchlings.

Educate construction contractors and pertinent NCDOT staff as to the adverse effects of artificial lighting on sea turtles.

Minimize the effects of construction lighting on nesting sea turtles and hatchlings.

Minimize the effects of vehicle headlights from the completed bridge.

Avoid permanent light fixtures.

All construction equipment and personnel must avoid all marked sea turtle nests.

## **PDEA Natural Environment Section**

This Major Modification shall be attached to the original of Permit No. 106-12, which was issued on 9/19/12, and copies of all documents shall be readily available on site when a Division representative inspects the project for compliance.

*Conditions from Pea Island National Wildlife Refuge Special Use Permit accepted September 27, 2013 and modified on July 16, 2015:*

### **Division 1 Construction Unit**

The Refuge Manager should be contacted immediately at (252) 473-1131 upon discovery of any wildfire, or any leak, spill, or break in a pipeline, power line, canal, or dike, or any other accident or incident that has the potential to have an adverse impact on the soil, wildlife, or plants in the area. Any unusual wildlife sightings or suspected illegal activities should be reported to the Refuge Manager.

The effective dates of this permit include the period from September 16, 2013 through December 31, 2017. If it should become necessary to extend the effective period, a request for extension should be submitted no less than 5 days in advance. The Refuge Manager or designee shall be notified no less than 3 days prior to commencement of activities on the Refuge.

Activities authorized through this permit include reasonable and prudent work within the existing North Carolina Department of Transportation (NCDOT) ROW for the existing NC Highway 12 and those areas identified in pre-construction drawings as temporary easement areas for the purpose of maintaining safe traffic flow while preparing for and construction of a concrete replacement bridge to replace the temporary steel bridge.

Care shall be taken so as to avoid harm to wildlife and fisheries resources, including their habitats.

Temporary work outside of the existing NC 12 ROW as described in project plans reviewed by the Refuge Manager is authorized to the extent necessary to complete construction of the replacement bridge and restoration of NC 12 in a safe and effective manner. This authorization is conditional upon full restoration of affected areas is completed to the satisfaction of the Refuge Manager or designee. Prior consultation with the Refuge Manager or designee is required for any additional temporary work outside of the existing ROW and not shown on the pre-construction drawings.

Special Use Permit 2013-003 is limited to the specific request for sufficient temporary easement for bridge construction at the "Pea Island Inlet" site

The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and

There must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.

Special Use Permit 2013-003 shall be invalidated in the event of failure by NCDOT or FHWA to satisfactorily complete the environmental administrative record for compliance with full disclosure and permitting requirements.

In the event of bird or turtle nesting activity within or adjacent to the project area as determined by the Refuge Manager NCDOT shall work with the contractor and incorporate remedial measures as recommended by USFWS to minimize or eliminate lighting, noise, or construction and associated activities. NCDOT shall be responsible for monitoring nesting activity as determined necessary by the Refuge Manager. Any and all temporary easement, staging, or other work areas on the Refuge shall be sloped, contoured, and re-vegetated to pre-work conditions or to the satisfaction of the Refuge Manager.

Upon completion of construction, NCDOT shall address the issue of public access in the vicinity of New Inlet through the following measures:

The existing parking lot on the east side of the NC Highway 12 and closest to Pea Island (New) Inlet shall be fully removed along with all construction materials, including concrete, asphalt, contaminated soils, and any other material not naturally belonging on the site. A replacement parking lot shall be constructed and the kiosk shall be relocated/ reconstructed at a new site near the northern terminus of the Phase IIB bridge. The site will be selected by the Refuge Manager with input from NCDOT upon completion of the Phase IIB bridge.

The existing parking lot (New Inlet Parking Lot) and primitive boat access point on the west side of NC Highway 12 shall be fully restored upon completion of construction and an access drive similar to the one for the parking lot at the Bonner Bridge shall be constructed from the southern terminus of the new bridge to the New Inlet Parking Lot within the existing easement to the greatest extent possible. In order to minimize wetland impacts while providing safe ingress and egress from the boat access drive, NCDOT will be allowed to construct a turnaround on the east side of the existing easement, as well as a small area outside the easement on the west side of the existing easement, as depicted on Exhibit 1. Upon project completion, the maintenance of the driveway and turnaround will be the responsibility of USFWS.

Permittee is responsible for removing any and all construction debris, materials, and equipment from the Refuge to the satisfaction of the Refuge Manager.

The only allowable use in the additional TCE is solely for the purpose of constructing the Phase IIAB Bridge.

**U.S. ARMY CORPS OF ENGINEERS  
WILMINGTON DISTRICT**

Action Id. SAW-2013-01039 County: Dare U.S.G.S. Quad: NC-PEA ISLAND OE W

**GENERAL PERMIT (REGIONAL AND NATIONWIDE) VERIFICATION**

Permittee: NC Department of Transportation

Richard Hancock

Address: 1598 Mail Service Center

Raleigh, NC, 27699-1598

Telephone Number:

Size (acres) 4.0 acres

Nearest Town Rodanthe

Nearest Waterway Atlantic Ocean

River Basin Albemarle

USGS HUC 03010205

Coordinates Latitude: 35.6749451416203

Longitude: -75.4804814340938

Location description: The project area is located within the existing NCDOT NC Highway 12 easement and will also include a temporary construction easement obtained from the Pea Island National Wildlife Refuge. The project starts approximately 5.5 miles south of the southern terminus of the Bonner Bridge and continues approximately 1.02 miles to the south. The project is adjacent to the Pamlico Sound. This portion of the project is considered Phase IIA of the overall TIP project B-2500.

Description of projects area and activity: NCDOT proposes to replace the existing temporary bridge over New Inlet on the Pea Island National Wildlife Refuge. The existing bridge was constructed as an emergency measure following Hurricane Irene in 2011.

Applicable Law:  Section 404 (Clean Water Act, 33 USC 1344)  
 Section 10 (Rivers and Harbors Act, 33 USC 403)

Authorization: Regional General Permit Number or Nationwide Permit Number: NWP 33 Temporary Construction, Access, and Dewatering. SEE ATTACHED RGP or NWP GENERAL, REGIONAL AND SPECIAL CONDITIONS

**Your work is authorized by the above referenced permit provided it is accomplished in strict accordance with the attached conditions and your submitted application and attached information dated 06/19/2015. Any violation of the attached conditions or deviation from your submitted plans may subject the permittee to a stop work order, a restoration order, a Class I administrative penalty, and/or appropriate legal action.**

This verification will remain valid until the expiration date identified below unless the nationwide authorization is modified, suspended or revoked. If, prior to the expiration date identified below, the nationwide permit authorization is reissued and/or modified, this verification will remain valid until the expiration date identified below, provided it complies with all requirements of the modified nationwide permit. If the nationwide permit authorization expires or is suspended, revoked, or is modified, such that the activity would no longer comply with the terms and conditions of the nationwide permit, activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon the nationwide permit, will remain authorized provided the activity is completed within twelve months of the date of the nationwide permit's expiration, modification or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend or revoke the authorization.

Activities subject to Section 404 (as indicated above) may also require an individual Section 401 Water Quality Certification. You should contact the NC Division of Water Quality (telephone 919-807-6300) to determine Section 401 requirements.

For activities occurring within the twenty coastal counties subject to regulation under the Coastal Area Management Act (CAMA), prior to beginning work you must contact the N.C. Division of Coastal Management in Elizabeth City, NC, at (252) 264-3901.

This Department of the Army verification does not relieve the permittee of the responsibility to obtain any other required Federal, State or local approvals/permits.

If there are any questions regarding this verification, any of the conditions of the Permit, or the Corps of Engineers regulatory program, please contact Tracey Wheeler at 910-251-4627 or Tracey.L.Wheeler@usace.army.mil.

Corps Regulatory Official: WHEELER.TRACEY.L.1271895182

Date: 07/02/2015

Expiration Date of Verification: 03/18/2017

Digitally signed by WHEELER.TRACEY.L.1271895182  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,  
ou=USA, cn=WHEELER.TRACEY.L.1271895182  
Date: 2015.07.02 12:26:10 -0400

## Determination of Jurisdiction:

- A.  Based on preliminary information, there appear to be waters of the US including wetlands within the above described project area. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331).
- B.  There are Navigable Waters of the United States within the above described project area subject to the permit requirements of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- C.  There are waters of the US and/or wetlands within the above described project area subject to the permit requirements of Section 404 of the Clean Water Act (CWA)(33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- D.  The jurisdictional areas within the above described project area have been identified under a previous action. Please reference jurisdictional determination issued 1/22/2013. Action ID: SAW-2013-00107.

**Basis For Determination: The site exhibits wetland criteria as defined in the 1987 Corps Wetland Delineation Manual and Atlantic and Gulf Coast Regional Supplement.**

**E. Attention USDA Program Participants:** This delineation/determination has been conducted to identify the limits of Corps' Clean Water Act jurisdiction for the particular site identified in this request. The delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA Program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

**F. Appeals Information (This information applies only to approved jurisdictional determinations as indicated in B and C above).**

This correspondence constitutes an approved jurisdictional determination for the above described site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and request for appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the following address:

US Army Corps of Engineers  
South Atlantic Division  
Attn: Jason Steele, Review Officer  
60 Forsyth Street SW, Room 10M15  
Atlanta, Georgia 30303-8801  
Phone: (404) 562-5137

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by

**\*\*It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this correspondence.\*\***

Corps Regulatory Official: WHEELER.TRACEY.L.1271895182  
**Tracey Wheeler**

Digitally signed by WHEELER.TRACEY.L.1271895182  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USA,  
cn=WHEELER.TRACEY.L.1271895182  
Date: 2015.07.02 12:26:35 -0400

Date of JD: **07/02/2015**  
Expiration Date of JD: **01/22/2018**

The Wilmington District is committed to providing the highest level of support to the public. To help us ensure we continue to do so, please complete our customer Satisfaction Survey online at <http://regulatory.usacesurvey.com/>.



## SPECIAL CONDITIONS

Action I.D. # SAW-2013-01039 – NCDOT, NC Highway 12, TIP # B-2500, Phase II A, Dare County, NC

- a) All work authorized by this permit must be performed in strict compliance with the attached plans submitted June 19, 2015, which are part of this permit. Any modification to these plans must be approved by the US Army Corps of Engineers (USACE) prior to implementation.
- b) The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each or its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit, and any authorized modifications. A copy of this permit, and any authorized modifications, including all conditions, shall be available at the project site during construction and maintenance of this project.
- c) Except as authorized by this permit or any USACE approved modification to this permit, no excavation, fill, or mechanized land-clearing activities shall take place at any time in the construction or maintenance of this project, within waters or wetlands, or shall any activities take place that cause the degradation of waters or wetlands. There shall be no excavation from, waste disposal into, or degradation of, jurisdictional wetlands or waters associated with this permit without appropriate modification of this permit, including appropriate compensatory mitigation. This prohibition applies to all borrow and fill activities connected with this project. In addition, except as specified in the plans attached to this permit, no excavation, fill or mechanized land-clearing activities shall take place at any time in the construction or maintenance of this project, in such a manner as to impair normal flows and circulation patterns within, into, or out of waters or wetlands or to reduce the reach of waters or wetlands.
- d) The Permittee shall schedule an onsite preconstruction meeting between its representatives, the contractor's representatives and the appropriate Corps of Engineers Project Manager prior to undertaking any work within jurisdictional waters and wetlands to ensure that there is a mutual understanding of all terms and conditions contained within the Department of the Army permit. The Permittee shall notify the Corps of Engineers Project Manager a minimum of thirty (30) days in advance of the scheduled meeting in order to provide that individual with ample opportunity to schedule and participate in the required meeting.
- e) The permittee shall remove all sediment and erosion control measures placed in wetlands or waters, and shall restore natural grades in those areas, prior to project completion.
- f) Violation of these conditions or violation of Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act must be reported in writing to the Wilmington District U.S. Army Corps of Engineers within 24 hours of the permittee's discovery of the violation.
- g) A representative of the Corps of Engineers will periodically and randomly inspect the work for compliance with these conditions. Deviations from these procedures may result in an administrative financial penalty and/or directive to cease work until the problem is resolved to the satisfaction of the Corps
- h) This permit only authorizes work on Phase II A of TIP B-2500. Construction on subsequent phases of

TIP B-2500 shall not commence until approval has been obtained by the US Army Corps of Engineers (the Corps) in accordance with this permit authorization through an approved modification or a separate permit authorization.

- l) The Permittee shall fully implement the Programmatic Agreement between the Permittee, the North Carolina State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Federal Highway Administration, signed in November 2010, which is incorporated herein by reference.
- j) Upon project completion, all temporary fills must be removed and impact areas returned to pre-construction elevations.

Action ID Number: SAW-2013-01039 County: Dare

Permittee: NC Department of Transportation  
Richard Hancock

Project Name: NCDOT/NC Highway 12/ Bonner Phase IIA/Pea Island/ TIP # B-2500

Date Verification Issued: 07/02/2015

Project Manager: Tracey Wheeler

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US ARMY CORPS OF ENGINEERS  
WILMINGTON DISTRICT  
Attn: Tracey Wheeler  
2407 West 5<sup>th</sup> Street  
Washington, North Carolina 27889

Please note that your permitted activity is subject to a compliance inspection by a U. S. Army Corps of Engineers representative. Failure to comply with any terms or conditions of this authorization may result in the Corps suspending, modifying or revoking the authorization and/or issuing a Class I administrative penalty, or initiating other appropriate legal action.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and condition of the said permit, and required mitigation was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

**NATIONWIDE PERMIT 33  
DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS  
FINAL NOTICE OF ISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS  
FEDERAL REGISTER  
AUTHORIZED MARCH 19, 2012**

**Temporary Construction, Access, and Dewatering.** Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

## NATIONWIDE PERMIT CONDITIONS

The following General Conditions must be followed in order for any authorization by a NWP to be valid:

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA



section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of

the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWP.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(1)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

#### D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the

vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific



conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### **FURTHER INFORMATION**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

### **DEFINITIONS**

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence

of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or

flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through

which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent

mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

## **Final Regional Conditions 2012**

### *NOTICE ABOUT WEB LINKS IN THIS DOCUMENT:*

*The web links (both internal to our District and any external links to collaborating agencies) in this document are valid at the time of publication. However, the Wilmington District Regulatory Program web page addresses, as with other agency web sites, may change over the timeframe of the five-year Nationwide Permit renewal cycle, in response to policy mandates or technology advances. While we will make every effort to check on the integrity of our web links and provide re-direct pages whenever possible, we ask that you report any broken links to us so we can keep the page information current and usable. We apologize in advanced for any broken links that you may encounter, and we ask that you navigate from the regulatory home page (wetlands and stream permits) of the Wilmington District Corps of Engineers, to the “Permits” section of our web site to find links for pages that cannot be found by clicking directly on the listed web link in this document.*

## **Final 2012 Regional Conditions for Nationwide Permits (NWP) in the Wilmington District**

### **1.0 Excluded Waters**

The Corps has identified waters that will be excluded from the use of all NWP’s during certain timeframes. These waters are:

#### **1.1 Anadromous Fish Spawning Areas**

Waters of the United States identified by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas are excluded during the period between February 15 and June 30, without prior written approval from NCDMF or NCWRC and the Corps.

#### **1.2 Trout Waters Moratorium**

Waters of the United States in the twenty-five designated trout counties of North Carolina are excluded during the period between October 15 and April 15 without prior written approval from the NCWRC. (See Section 2.7 for a list of the twenty-five trout counties).

#### **1.3 Sturgeon Spawning Areas as Designated by the National Marine Fisheries Service (NMFS)**

Waters of the United States designated as sturgeon spawning areas are excluded during the period between February 1 and June 30, without prior written approval from the NMFS.

## **2.0 Waters Requiring Additional Notification**

The Corps has identified waters that will be subject to additional notification requirements for activities authorized by all NWP's. These waters are:

### **2.1 Western NC Counties that Drain to Designated Critical Habitat**

For proposed activities within Waters of the U.S. that require a Pre-Construction Notification pursuant to General Condition 31 (PCN) and are located in the sixteen counties listed below, applicants must provide a copy of the PCN to the US Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. This PCN must be sent concurrently to the US Fish and Wildlife Service and the Corps Asheville Regulatory Field Office. Please see General Condition 18 for specific notification requirements related to Federally Endangered Species and the following website for information on the location of designated critical habitat.

Counties with tributaries that drain to designated critical habitat that require notification to the Asheville US Fish and Wildlife Service: Avery, Cherokee, Forsyth, Graham, Haywood, Henderson, Jackson, Macon Mecklenburg, Mitchell, Stokes, Surry, Swain, Transylvania, Union and Yancey.

Website and office addresses for Endangered Species Act Information:

The Wilmington District has developed the following website for applicants which provides guidelines on how to review linked websites and maps in order to fulfill NWP general condition 18 requirements: <http://www.saw.usace.army.mil/wetlands/ESA>

Applicants who do not have internet access may contact the appropriate US Fish and Wildlife Service offices listed below or the US Army Corps of Engineers at (910) 251- 4633:

US Fish and Wildlife Service  
Asheville Field Office  
160 Zillicoa Street  
Asheville, NC 28801  
Telephone: (828) 258-3939

Asheville US Fish and Wildlife Service Office counties: All counties west of and including Anson, Stanly, Davidson, Forsyth and Stokes Counties

US Fish and Wildlife Service  
Raleigh Field Office  
Post Office Box 33726  
Raleigh, NC 27636-3726  
Telephone: (919) 856-4520

Raleigh US Fish and Wildlife Service Office counties: all counties east of and including Richmond, Montgomery, Randolph, Guilford, and Rockingham Counties.

## **2.2 Special Designation Waters**

Prior to the use of any NWP in any of the following identified waters and contiguous wetlands in North Carolina, applicants must comply with Nationwide Permit General Condition 31 (PCN). The North Carolina waters and contiguous wetlands that require additional notification requirements are:

“Outstanding Resource Waters” (ORW) or “High Quality Waters” (HQW) as designated by the North Carolina Environmental Management Commission; “Inland Primary Nursery Areas” (IPNA) as designated by the NCWRC; “Contiguous Wetlands” as defined by the North Carolina Environmental Management Commission; or “Primary Nursery Areas” (PNA) as designated by the North Carolina Marine Fisheries Commission.

## **2.3 Coastal Area Management Act (CAMA) Areas of Environmental Concern**

Non-federal applicants for any NWP in a designated “Area of Environmental Concern” (AEC) in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA) must also obtain the required CAMA permit. Development activities for non-federal projects may not commence until a copy of the approved CAMA permit is furnished to the appropriate Wilmington District Regulatory Field Office (Wilmington Field Office – 69 Darlington Avenue, Wilmington, NC 28403 or Washington Field Office – 2407 West 5th Street, Washington, NC 27889).

## **2.4 Barrier Islands**

Prior to the use of any NWP on a barrier island of North Carolina, applicants must comply with Nationwide Permit General Condition 31 (PCN).

## **2.5 Mountain or Piedmont Bogs**

Prior to the use of any NWP in a Bog classified by the North Carolina Wetland Assessment Methodology (NCWAM), applicants shall comply with Nationwide Permit General Condition 31 (PCN). The latest version of NCWAM is located on the NC DWQ web site at: <http://portal.ncdenr.org/web/wq/swp/ws/pdu/ncwam> .

## **2.6 Animal Waste Facilities**

Prior to use of any NWP for construction of animal waste facilities in waters of the US, including wetlands, applicants shall comply with Nationwide Permit General Condition 31 (PCN).

## **2.7 Trout Waters**

Prior to any discharge of dredge or fill material into streams or waterbodies within the twenty-five (25) designated trout counties of North Carolina, the applicant shall comply with Nationwide Permit General Condition 31 (PCN). The applicant shall also provide a copy of the notification to the appropriate NCWRC office to facilitate the determination of any potential



impacts to designated Trout Waters. Notification to the Corps of Engineers will include a statement with the name of the NCWRC biologist contacted, the date of the notification, the location of work, a delineation of wetlands, a discussion of alternatives to working in the mountain trout waters, why alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to mountain trout waters.

#### NCWRC and NC Trout Counties

Western Piedmont Region Coordinator	Alleghany	Caldwell	Watauga
20830 Great Smoky Mtn. Expressway	Ashe	Mitchell	Wilkes
Waynesville, NC 28786	Avery	Stokes	
Telephone: (828) 452-2546	Burke	Surry	

Mountain Region Coordinator	Buncombe	Henderson	Polk
20830 Great Smoky Mtn. Expressway	Cherokee	Jackson	Rutherford
Waynesville, NC 28786	Clay	Macon	Swain
Telephone: (828) 452-2546	Graham	Madison	Transylvania
Fax: (828) 452-7772	Haywood	McDowell	Yancey

### 3.0 List of Corps Regional Conditions for All Nationwide Permits

The following conditions apply to all Nationwide Permits in the Wilmington District:

#### 3.1 Limitation of Loss of Perennial Stream Bed

NWPs may not be used for activities that may result in the loss or degradation of greater than 300 total linear feet of perennial, intermittent or ephemeral stream, unless the District Commander has waived the 300 linear foot limit for ephemeral and intermittent streams on a case-by-case basis and he determines that the proposed activity will result in minimal individual and cumulative adverse impacts to the aquatic environment. Loss of stream includes the linear feet of stream bed that is filled, excavated, or flooded by the proposed activity. Waivers for the loss of ephemeral and intermittent streams must be in writing and documented by appropriate/accepted stream quality assessments\*. This waiver only applies to the 300 linear feet threshold for NWPs.

\*NOTE: Applicants should utilize the most current methodology prescribed by Wilmington District to assess stream function and quality. Information can be found at:

<http://www.saw.usace.army.mil/wetlands/permits/nwp/nwp2012> (see “Quick Links”)

### **3.2 Mitigation for Loss of Stream Bed**

For any NWP that results in a loss of more than 150 linear feet of perennial and/or ephemeral/intermittent stream, the applicant shall provide a mitigation proposal to compensate for more than minimal individual and cumulative adverse impacts to the aquatic environment. For stream losses less than 150 linear feet, that require a PCN, the District Commander may determine, on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effect on the aquatic environment.

### **3.3 Pre-construction Notification for Loss of Streambed Exceeding 150 Feet.**

Prior to use of any NWP for any activity which impacts more than 150 total linear feet of perennial stream or ephemeral/ intermittent stream, the applicant must comply with Nationwide Permit General Condition 31 (PCN). This applies to NWPs that do not have specific notification requirements. If a NWP has specific notification requirements, the requirements of the NWP should be followed.

### **3.4 Restriction on Use of Live Concrete**

For all NWPs which allow the use of concrete as a building material, live or fresh concrete, including bags of uncured concrete, may not come into contact with the water in or entering into waters of the US. Water inside coffer dams or casings that has been in contact with wet concrete shall only be returned to waters of the US when it is no longer poses a threat to aquatic organisms.

### **3.5 Requirements for Using Riprap for Bank Stabilization**

For all NWPs that allow for the use of riprap material for bank stabilization, the following measures shall be applied:

**3.5.1.** Filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters.

**3.5.2.** The placement of riprap shall be limited to the areas depicted on submitted work plan drawings.

**3.5.3.** The riprap material shall be clean and free from loose dirt or any pollutant except in trace quantities that would not have an adverse environmental effect.

**3.5.4.** It shall be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal conditions.

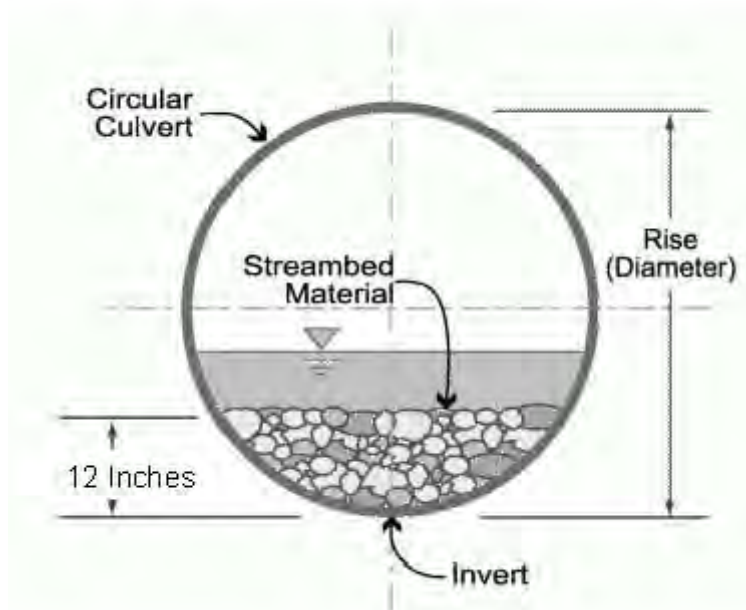
**3.5.5.** The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

**3.5.6.** A waiver from the specifications in this Regional Condition may be requested in writing. The waiver will only be issued if it can be demonstrated that the impacts of complying with this Regional condition would result in greater adverse impacts to the aquatic environment.

### **3.6 Safe Passage Requirements for Culvert Placement**

For all NWP's that involve the construction/installation of culverts, measures will be included in the construction/installation that will promote the safe passage of fish and other aquatic organisms. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. The width, height, and gradient of a proposed culvert should be such as to pass the average historical low flow and spring flow without adversely altering flow velocity. Spring flow should be determined from gage data, if available. In the absence of such data, bankfull flow can be used as a comparable level.

In the twenty (20) counties of North Carolina designated as coastal counties by the Coastal Area Management Act (CAMA): All pipes/culverts must be sufficiently sized to allow for the burial of the bottom of the pipe/culvert at least one foot below normal bed elevation when they are placed within the Public Trust Area of Environmental Concern (AEC) and/or the Estuarine Waters AEC as designated by CAMA, and/or all streams appearing as blue lines on United States Geological Survey (USGS) 7.5-minute quadrangle maps.



In all other counties: Culverts greater than 48 inches in diameter will be buried at least one foot below the bed of the stream. Culverts 48 inches in diameter or less shall be buried or placed on the stream bed as practicable and appropriate to maintain aquatic passage, and every effort shall be made to maintain the existing channel slope. The bottom of the culvert must be placed at a

depth below the natural stream bottom to provide for passage during drought or low flow conditions.

Culverts are to be designed and constructed in a manner that minimizes destabilization and head cutting. Destabilizing the channel and head cutting upstream should be considered and appropriate actions incorporated in the design and placement of the culvert.

A waiver from the depth specifications in this condition may be requested in writing. The waiver will be issued if it can be demonstrated that the proposal would result in the least impacts to the aquatic environment.

All counties: Culverts placed within riparian and/or riverine wetlands must be installed in a manner that does not restrict the flow and circulation patterns of waters of the United States. Culverts placed across wetland fills purely for the purposes of equalizing surface water do not have to be buried.

### **3.7 Notification to NCDENR Shellfish Sanitation Section**

Applicants shall notify the NCDENR Shellfish Sanitation Section prior to dredging in or removing sediment from an area closed to shell fishing where the effluent may be released to an area open for shell fishing or swimming in order to avoid contamination from the disposal area and cause a temporary shellfish closure to be made. Such notification shall also be provided to the appropriate Corps of Engineers Regulatory Field Office. Any disposal of sand to the ocean beach should occur between November 1 and April 30 when recreational usage is low. Only clean sand should be used and no dredged sand from closed shell fishing areas may be used. If beach disposal were to occur at times other than stated above or if sand from a closed shell fishing area is to be used, a swimming advisory shall be posted, and a press release shall be issued by the permittee.

### **3.8 Preservation of Submerged Aquatic Vegetation**

Adverse impacts to Submerged Aquatic Vegetation (SAV) are not authorized by any NWP within any of the twenty coastal counties defined by North Carolina's Coastal Area Management Act of 1974 (CAMA).

### **3.9 Sedimentation and Erosion Control Structures and Measures**

**3.9.1.** All PCNs will identify and describe sedimentation and erosion control structures and measures proposed for placement in waters of the US. The structures and measures should be depicted on maps, surveys or drawings showing location and impacts to jurisdictional wetlands and streams.

#### **4.0 Additional Regional Conditions for Specific Nationwide Permits**

##### **4.1 NWP #33 – Temporary Construction, Access and Dewatering**

**4.1.1.** The required restoration plan must include a timetable for restoration activities.



North Carolina Department of Environment and Natural Resources

Pat McCrory  
Governor

Donald R. van der Vaart  
Secretary

June 22, 2015

**MEMORANDUM**

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To: Rodger Rochelle, P.E. Administrator, Technical Services Division

From: David Wainwright, Division of Water Resources, Central Office *DW*

Subject: 401 WQC Modification for B-2500 AB, Replacement of the Temporary Bridge over New Inlet on NC 12 in Dare County, NCDWR Project No. 20130144v.5

Mr. Rochelle,

On June 19, 2015 we received a request for a modification to the existing 401 Water Quality Certification (WQC) for the replacement of the temporary bridge over the New Inlet on NC 12 in Dare County, TIP B-2500AB, NCDWR Project No. 20130144. The project modifications are being requested under a U.S. Army Corps of Engineer Nationwide 33, which corresponds to a NCDWR General Certification No. 3893.

We have reviewed the application package and appreciate the NCDOT submitting a courtesy copy of the application to us for review. The proposed impacts in the application are below the thresholds which generally require written concurrence from the NCDWR. Therefore, provided the conditions in our General Certification No. 3893 (attached) can be met, no further correspondence from us will be necessary at this time. Should your project change, should additional impacts be necessary, or should you not be able to meet the conditions of the attached General Certification 3893, please notify us so we can discuss how to proceed.

Attachments: DWR GC 3893

Electronic copy only distribution:

Tracey Wheeler, US Army Corps of Engineers, Washington Field Office  
Chris Rivenbark, NC Department of Transportation  
Cathy Brittingham, NC Division of Coastal Management  
Garcy Ward, NC Division of Water Resources Washington Regional Office  
File Copy



PAT MCCRORY

Governor

DONALD R. VAN DER VAART

Secretary

S. JAY ZIMMERMAN

Director

December 16, 2015  
Dare County  
NCDWR Project No. 20130144 v.5  
Bridge over New Inlet on NC 12  
TIP No.B-2500 AB

**MODIFICATION of APPROVAL of 401 WATER QUALITY CERTIFICATION with ADDITIONAL CONDITIONS**

Mr. Colin Mellor, Group Leader  
Project Development and Environmental Analysis Unit  
North Carolina Department of Transportation  
1598 Mail Service Center  
Raleigh, North Carolina, 27699-1598

Dear Mr. Mellor:

You have our approval, in accordance with the conditions listed below, for the following impacts for the purpose of replacing the temporary bridge over the New Inlet on NC 12 with a permanent bridge in Dare County:

**Wetland and Open Water Impacts in the Pasquotank River Basin**

Site	Wetland Fill (temporary) (ac)	Open Water Fill (temporary) (ac)
7	--	0.04
8	--	0.13
9	<.01	0.01
10	--	0.14
11	--	0.02
18	<.01	--
19	--	<.01
<b>Total</b>	<b>&lt;.01</b>	<b>0.35</b>

**Total Wetland Impact for Project: <.01 acres.**

The project shall be constructed in accordance with your application dated received June 19, 2015. After reviewing your application, we have decided that these impacts are covered by General Water Quality Certification Number 3893. This certification corresponds to the Nationwide Permit 33 issued by the Corps of Engineers. In addition, you should acquire any other federal, state or local permits before you proceed with your project including (but not limited to) Sediment and Erosion Control, Non-Discharge and Water Supply Watershed regulations. This approval will expire with the accompanying 404 permit.

This approval is valid solely for the purpose and design described in your application (unless modified below). Should your project change, you must notify the NCDWR and submit a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter, and is thereby responsible for complying with all the conditions. If total wetland fills for this project (now or in the future) exceed one acre, or of total impacts to streams (now or in the future) exceed 150 linear feet, compensatory mitigation may be required as

described in 15A NCAC 2H .0506 (h) (6) and (7) For this approval to remain valid, you must adhere to the conditions listed in the attached certification(s) and any additional conditions listed below.

**Condition(s) of Certification:**

**Project Specific Conditions**

1. Mitigation [15A NCAC 02H.0506(h)]
  - a. Currently, as proposed, impacts do not require mitigation. However, should future impacts for this project meet or exceed one acre of jurisdictional wetlands or 150 linear feet of jurisdictional stream, mitigation may be required.
  - b. Once the temporary road is removed, areas of temporary impact shall be restored to pre-impact conditions as close as possible. Elevations shall be determined based on adjacent wetland areas, and appropriate vegetation shall be established.
  - c. Visual vegetation monitoring of the site will be required for survival and aerial coverage of vegetation. Visual monitoring shall be for a minimum of one year after completion of restoration. Vegetation monitoring will not cease prior to approval from the NCDWR. Since the restoration will occur on federally owned lands, the NCDWR will not agree to cease monitoring until the Pea Island National Wildlife Refuge representative(s) agrees that the restoration is satisfactory.
2. Jetting [15A NCAC 02H.0506(b)(2)]
  - a. The use of jetting to install bridge bents, remove the temporary bridge, and any other activity shall be kept to a minimum.
  - b. All jetting occurring within the New Inlet shall take place at ebb tide.
  - c. All jetting spoils shall be confined to the 100 foot transportation easement within the Pea Island National Wildlife Refuge, unless otherwise allowed by the Refuge. Spoils shall not be deposited within wetlands or other jurisdictional areas.
  - d. Pipes and hoses used for jetting intake placed in wetland and other jurisdictional areas shall be placed by hand.
  - e. In order to prevent the intake of larval fish species into jetting intake hoses and pipes, a screen of sufficient size shall be placed on intake hoses. The size of the screen necessary shall be coordinated with the NCDMF.
3. Deck drains are allowed on the proposed bridge as described in the application. This supersedes Condition 9 of Water Quality Certification No. 3893.
4. A temporary work bridge or timber matting may be used as necessary during construction of the new bridge or during demolition of the existing structure provided no materials are stored within the area of the breach identified as the channel and limiting materials stored within the breach to that which can be readily used and only for the current task(s) at hand. [15A NCAC 02H.0506(b)(2)(3)]
5. NCDOT and its contractors shall take all due diligence in removing construction related materials, construction equipment, timber mats, and all other related equipment and materials from potentially affected work areas in the vicinity of the channel to an adequate storage area during projected severe weather. [15A NCAC 02H.0506(b)(2)(3)]
6. Strict adherence to the most recent version of NCDOT's Best Management Practices For Bridge Demolition and Removal approved by the US Army Corps of Engineers is a condition of the 401 Water Quality Certification.
7. NCDOT shall be in compliance with the NCS00250 issued to the NCDOT, including the applicable requirements of the NCGO1000. Please note the extra protections for the special or threatened waters.
8. Adherence to *The Guidelines for Avoiding Impacts to the West Indian Manatee: Precautionary Measures for Construction Activities in North Carolina Waters* will be required throughout construction.

**General Conditions**



1. If concrete is used during construction, a dry work area shall be maintained to prevent direct contact between curing concrete and stream water. Water that inadvertently contacts uncured concrete shall not be discharged to surface waters due to the potential for elevated pH and possible aquatic life and fish kills. [15A NCAC 02B.0200]
2. During the construction of the project, no staging of equipment of any kind is permitted in waters of the U.S., or protected riparian buffers. [15A NCAC 02H.0506(b)(2)]
3. The Permittee shall ensure that the final design drawings adhere to the permit and to the permit drawings submitted for approval. [15A NCAC 02H .0507(c) and 15A NCAC 02H .0506 (b)(2) and (c)(2)]
4. All mechanized equipment operated near surface waters must be regularly inspected and maintained to prevent contamination of stream waters from fuels, lubricants, hydraulic fluids, or other toxic materials. [15A NCAC 02H.0506(b)(3)]
5. Discharging hydroseed mixtures and washing out hydroseeders and other equipment in or adjacent to surface waters is prohibited. [15A NCAC 02H.0506(b)(3)]
6. All fill slopes located in jurisdictional wetlands shall be placed at slopes no flatter than 3:1, unless otherwise authorized by this certification. [15A NCAC 02H.0506(b)(2)]
7. A copy of this Water Quality Certification shall be maintained on the construction site at all times. In addition, the Water Quality Certification and all subsequent modifications, if any, shall be maintained with the Division Engineer and the on-site project manager. [15A NCAC 02H .0507(c) and 15A NCAC 02H .0506 (b)(2) and (c)(2)]
8. The outside buffer, wetland or water boundary located within the construction corridor approved by this authorization shall be clearly marked by highly visible fencing prior to any land disturbing activities. Impacts to areas within the fencing are prohibited unless otherwise authorized by this certification. [15A NCAC 02H.0501 and .0502]
9. The issuance of this certification does not exempt the Permittee from complying with any and all statutes, rules, regulations, or ordinances that may be imposed by other government agencies (i.e. local, state, and federal) having jurisdiction, including but not limited to applicable buffer rules, stormwater management rules, soil erosion and sedimentation control requirements, etc.
10. Native riparian vegetation must be reestablished in the riparian areas within the construction limits of the project by the end of the growing season following completion of construction.[15A NCAC 02H.0506(b)(2)]
11. There shall be no excavation from, or waste disposal into, jurisdictional wetlands or waters associated with this permit without appropriate modification. Should waste or borrow sites, or access roads to waste or borrow sites, be located in wetlands or streams, compensatory mitigation will be required since that is a direct impact from road construction activities.[15A NCAC 02H.0506(b)(3) and (c)(3)]
12. Erosion and sediment control practices must be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices in order to protect surface waters standards [15A NCAC 02H.0506(b)(3) and (c)(3)]:
  - a. The erosion and sediment control measures for the project must be designed, installed, operated, and maintained in accordance with the most recent version of the *North Carolina Sediment and Erosion Control Planning and Design Manual*.
  - b. The design, installation, operation, and maintenance of the sediment and erosion control measures must be such that they equal, or exceed, the requirements specified in the most recent version of the *North Carolina Sediment and Erosion Control Manual*. The devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) projects, including contractor-owned or leased borrow pits associated with the project.
  - c. For borrow pit sites, the erosion and sediment control measures must be designed, installed, operated, and maintained in accordance with the most recent version of the *North Carolina Surface Mining Manual*.
  - d. The reclamation measures and implementation must comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act.

13. Sediment and erosion control measures shall not be placed in wetlands or waters unless otherwise approved by this Certification. [15A NCAC 02H.0506(b)(3) and (c)(3)]
14. The permittee and its authorized agents shall conduct its activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act) and any other appropriate requirements of State and Federal law. If the NCDWR determines that such standards or laws are not being met (including the failure to sustain a designated or achieved use) or that State or federal law is being violated, or that further conditions are necessary to assure compliance, the NCDWR may reevaluate and modify this certification. [15A NCAC 02B.0200]
15. The Permittee shall report any violations of this certification to the Division of Water Resources within 24 hours of discovery. [15A NCAC 02B.0506(b)(2)]
16. Upon completion of the project (including any impacts at associated borrow or waste sites), the NCDOT Division Engineer shall complete and return the enclosed "Certification of Completion Form" to notify the NCDWR when all work included in the 401 Certification has been completed. [15A NCAC 02H.0502(f)]

If you wish to contest any statement in the attached Certification you must file a petition for an administrative hearing. You may obtain the petition form from the office of Administrative hearings. You must file the petition with the office of Administrative Hearings within sixty (60) days of receipt of this notice. A petition is considered filed when it is received in the office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00am and 5:00pm, except for official state holidays. The original and one (1) copy of the petition must be filed with the Office of Administrative Hearings.

The petition may be faxed-provided the original and one copy of the document is received by the Office of Administrative Hearings within five (5) business days following the faxed transmission.  
The mailing address for the Office of Administrative Hearings is:

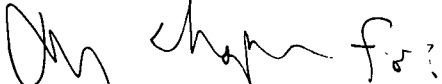
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
Telephone: (919) 431-3000, Facsimile: (919) 431-3100

A copy of the petition must also be served on DEQ as follows:

Mr. Sam M.Hayes, General Counsel  
Department of Environmental Quality  
1601 Mail Service Center

This letter completes the review of the Division of Water Resources under Section 401 of the Clean Water Act. If you have any questions, please contact Garcy Ward at (252)946-6481 or garcy.ward@ncdenr.gov

Sincerely,

  
S. Jay Zimmerman, Director  
Division of Water Resources

Electronic copy only distribution:

Tracey Wheeler, US Army Corps of Engineers, Washington Field Office  
Clay Willis, Division 1 Environmental Officer  
Colin Mellor, NC Department of Transportation  
Chris Rivenbark, NC Department of Transportation  
Dr. Cynthia Van Der Wiele, US Environmental Protection Agency  
Cathy Brittingham, NC Division of Coastal Management  
Greg Daisey, NC Division of Coastal Management  
Garcy Ward, NC Division of Water Resources Washington Regional Office  
File Copy



PAT MCCRORY.

Governor

DONALD R. VAN DER VAART

Secretary

S. JAY ZIMMERMAN

Director

NCDWR Project No.: \_\_\_\_\_ County: \_\_\_\_\_

Applicant: \_\_\_\_\_

Project Name: \_\_\_\_\_

Date of Issuance of 401 Water Quality Certification: \_\_\_\_\_

**Certificate of Completion**

Upon completion of all work approved within the 401 Water Quality Certification or applicable Buffer Rules, and any subsequent modifications, the applicant is required to return this certificate to the 401 Transportation Permitting Unit, North Carolina Division of Water Resources, 1617 Mail Service Center, Raleigh, NC, 27699-1617. This form may be returned to NCDWR by the applicant, the applicant's authorized agent, or the project engineer. It is not necessary to send certificates from all of these.

**Applicant's Certification**

I, \_\_\_\_\_, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Agent's Certification**

I, \_\_\_\_\_, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Engineer's Certification**

\_\_\_\_\_ Partial \_\_\_\_\_ Final

I, \_\_\_\_\_, as a duly registered Professional Engineer in the State of North Carolina, having been authorized to observe (periodically, weekly, full time) the construction of the project for the Permittee hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature \_\_\_\_\_ Registration No. \_\_\_\_\_

Date \_\_\_\_\_

# Water Quality Certification No. 3893

**GENERAL CERTIFICATION FOR PROJECTS ELIGIBLE  
FOR U.S. ARMY CORPS OF ENGINEERS NATIONWIDE PERMIT NUMBER 33  
(TEMPORARY CONSTRUCTION, ACCESS AND DEWATERING)  
AND RIPARIAN AREA PROTECTION RULES (BUFFER RULES)**

Water Quality Certification Number 3893 is issued in conformity with the requirements of Section 401, Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality Regulations in 15A NCAC 02H .0500 and 15A NCAC 02B .0200 for the discharge of fill material to waters and wetland areas as described in 33 CFR 330 Appendix A (B) (33) and for the Riparian Area Protection Rules (Buffer Rules) in 15A NCAC 02B .0200.

The State of North Carolina certifies that the specified category of activity will not violate applicable portions of Sections 301, 302, 303, 306 and 307 of the Public Laws 92-500 and 95-217 if conducted in accordance with the conditions hereinafter set forth.

**Activities meeting any one (1) of the following thresholds or circumstances require written approval for a 401 Water Quality Certification from the Division of Water Quality (the "Division"):**

- a. Any stream relocation; or
- b. Any impact associated with a Notice of Violation or an enforcement action for violation(s) of DWQ Wetland Rules (15A NCAC 02H .0500), Isolated Wetland Rules (15A NCAC 02H .1300), DWQ Surface Water or Wetland Standards, or Riparian Buffer Rules (15A NCAC 02B .0200); or
- c. Any impacts to streams and/or buffers in the Neuse, Tar-Pamlico, or Catawba River Basins or in the Randleman, Jordan or Goose Creek Watersheds (or any other basin or watershed with Riparian Area Protection Rules [Buffer Rules] in effect at the time of application) *unless* the activities are listed as "EXEMPT" from these rules or a Buffer Authorization Certificate is issued through N.C. Division of Coastal Management (DCM) delegation for "ALLOWABLE" activities.

In accordance with North Carolina General Statute 143-215.3D(e), written approval for a 401 Water Quality General Certification must include the appropriate fee. If a project also requires a CAMA Permit, then one payment to both agencies shall be submitted and will be the higher of the two fees.

**Activities included in this General Certification that do not meet one of the thresholds listed above do not require written approval from the Division as long as they comply with the Conditions of Certification listed below. If any of these Conditions cannot be met, then written approval from the Division is required.**

Conditions of Certification:

1. No Impacts Beyond those Authorized in the Written Approval or Beyond the Threshold of Use of this Certification

No waste, spoil, solids, or fill of any kind shall occur in wetlands, waters, or riparian areas beyond the footprint of the impacts depicted in the Pre-Construction Notification, as authorized in the written approval from the Division or beyond the thresholds established for use of this Certification without written authorization, including incidental impacts. All construction activities, including the design, installation, operation, and maintenance of sediment and erosion control Best Management Practices shall be performed so that no violations of state water quality standards, statutes, or rules occur. Approved plans and specifications for this project are incorporated by reference and are enforceable parts of this permit.

# Water Quality Certification No. 3893

## 2. Standard Erosion and Sediment Control Practices

Erosion and sediment control practices must be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices and if applicable, comply with the specific conditions and requirements of the NPDES Construction Stormwater Permit issued to the site:

- a. Design, installation, operation, and maintenance of the sediment and erosion control measures must be such that they equal or exceed the requirements specified in the most recent version of the *North Carolina Sediment and Erosion Control Manual*. The devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) projects, including contractor-owned or leased borrow pits associated with the project.
- b. For borrow pit sites, the erosion and sediment control measures must be designed, installed, operated, and maintained in accordance with the most recent version of the *North Carolina Surface Mining Manual*.
- c. Reclamation measures and implementation must comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act and the Mining Act of 1971.
- d. Sufficient materials required for stabilization and/or repair of erosion control measures and stormwater routing and treatment shall be on site at all times.
- e. If the project occurs in waters or watersheds classified as Primary Nursery Areas (PNAs), SA, WS-I, WS-II, High Quality (HQW), or Outstanding Resource (ORW) waters, then the sedimentation and erosion control designs must comply with the requirements set forth in 15A NCAC 04B .0124, *Design Standards in Sensitive Watersheds*.

## 3. No Sediment and Erosion Control Measures in Wetlands or Waters

Sediment and erosion control measures shall not be placed in wetlands or waters. Exceptions to this condition require application submittal to and written approval by the Division. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, then design and placement of temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands, stream beds, or banks, adjacent to or upstream and downstream of the above structures. All sediment and erosion control devices shall be removed and the natural grade restored within two (2) months of the date that the Division of Land Resources (DLR) or locally delegated program has released the specific area within the project.

## 4. Construction Stormwater Permit NCG010000

An NPDES Construction Stormwater Permit is required for construction projects that disturb one (1) or more acres of land. This Permit allows stormwater to be discharged during land disturbing construction activities as stipulated in the conditions of the permit. If your project is covered by this permit, full compliance with permit conditions including the erosion & sedimentation control plan, inspections and maintenance, self-monitoring, record keeping and reporting requirements is required. A copy of the general permit (NCG010000), inspection log sheets, and other information may be found at <http://portal.ncdenr.org/web/wq/ws/su/npdessw#tab-w>.

The North Carolina Department of Transportation (NCDOT) shall be required to be in full compliance with the conditions related to construction activities within the most recent version of their individual NPDES (NCS000250) stormwater permit.

# Water Quality Certification No. 3893

## 5. Construction Moratoriums and Coordination

If activities must occur during periods of high biological activity (i.e. sea turtle nesting, fish spawning, or bird nesting), then biological monitoring may be required at the request of other state or federal agencies and coordinated with these activities.

All moratoriums on construction activities established by the NC Wildlife Resources Commission (WRC), US Fish and Wildlife Service (USFWS), NC Division of Marine Fisheries (DMF), or National Marine Fisheries Service (NMFS) to lessen impacts on trout, anadromous fish, larval/post-larval fishes and crustaceans, or other aquatic species of concern shall be implemented. Exceptions to this condition require written approval by the resource agency responsible for the given moratorium.

Work within the twenty-five (25) designated trout counties or identified state or federal endangered or threatened species habitat shall be coordinated with the appropriate WRC, USFWS, NMFS, and/or DMF personnel.

## 6. Work in the Dry

All work in or adjacent to stream waters shall be conducted so that the flowing stream does not come in contact with the disturbed area. Approved best management practices from the most current version of the NC Sediment and Erosion Control Manual, or the NC DOT Construction and Maintenance Activities Manual, such as sandbags, rock berms, cofferdams, and other diversion structures shall be used to minimize excavation in flowing water. Exceptions to this condition require application submittal to and written approval by the Division.

## 7. Riparian Area Protection (Buffer) Rules

Activities located in the protected riparian areas (whether jurisdictional wetlands or not), within the Neuse, Tar-Pamlico, or Catawba River Basins or in the Randleman, Jordan, or Goose Creek Watersheds (or any other basin or watershed with buffer rules) shall be limited to "uses" identified within and constructed in accordance with 15A NCAC 02B .0233, .0259, .0243, .0250, .0267 and .0605, and shall be located, designed, constructed, and maintained to have minimal disturbance to protect water quality to the maximum extent practicable through the use of best management practices. All buffer rule requirements, including diffuse flow requirements, must be met.

8. If concrete is used during the construction, then all necessary measures shall be taken to prevent direct contact between uncured or curing concrete and waters of the state. Water that inadvertently contacts uncured concrete shall not be discharged to waters of the state due to the potential for elevated pH and possible aquatic life/ fish kills.
9. Bridge deck drains shall not discharge directly into the stream. Stormwater shall be directed across the bridge and pre-treated through site-appropriate means (grassed swales, pre-formed scour holes, vegetated buffers, etc.) before entering the stream. Please refer to the most current version of *Stormwater Best Management Practices*. Exceptions to this condition require written approval by the Division.
10. Placement of culverts and other structures in Waters and Wetlands

Culverts required for this project shall be designed and installed in such a manner that the original stream profiles are not altered and allow for aquatic life movement during low flows. Existing stream dimensions (including the cross section dimensions, pattern, and longitudinal profile) must be maintained above and below locations of each culvert.

## Water Quality Certification No. 3893

Placement of culverts and other structures in waters and streams must be below the elevation of the streambed by one foot for all culverts with a diameter greater than 48 inches, and 20 percent of the culvert diameter for culverts having a diameter less than or equal to 48 inches, to allow low flow passage of water and aquatic life.

When topographic constraints indicate culvert slopes of greater than 5%, culvert burial is not required, provided that all alternative options for flattening the slope have been investigated and aquatic life movement/ connectivity has been provided when possible (rock ladders, crossvanes, etc). Notification to the Division including supporting documentation to include a location map of the culvert, culvert profile drawings, and slope calculations shall be provided to the Division 60 days prior to the installation of the culvert.

When bedrock is present in culvert locations, culvert burial is not required provided that there is sufficient documentation of the presence of bedrock. Notification to the Division including supporting documentation such as, but not limited to, a location map of the culvert, geotechnical reports, photographs, etc shall be provided to the Division a minimum of 60 days prior to the installation of the culvert. If bedrock is discovered during construction, then the Division shall be notified by phone or email within 24 hours of discovery.

If other site-specific topographic constraints preclude the ability to bury the culverts as described above and/or it can be demonstrated that burying the culvert would result in destabilization of the channel, then exceptions to this condition require application submittal to, and written approval by, the Division of Water Quality, regardless of the total impacts to streams or wetlands from the project.

Installation of culverts in wetlands must ensure continuity of water movement and be designed to adequately accommodate high water or flood conditions. Additionally, when roadways, causeways, or other fill projects are constructed across FEMA-designated floodways or wetlands, openings such as culverts or bridges must be provided to maintain the natural hydrology of the system as well as prevent constriction of the floodway that may result in destabilization of streams or wetlands.

The establishment of native, woody vegetation and other soft stream bank stabilization techniques must be used where practicable instead of riprap or other bank hardening methods.

### 11. Compensatory Mitigation

In accordance with 15A NCAC 02H .0506 (h), compensatory mitigation may be required for losses of equal to or greater than 150 linear feet of streams (intermittent and perennial) and/or equal to or greater than one (1) acre of wetlands. For linear public transportation projects, impacts equal to or exceeding 150 linear feet per stream shall require mitigation.

Buffer mitigation may be required for any project with Buffer Rules in effect at the time of application for activities classified as "Allowable with Mitigation" or "Prohibited" within the Table of Uses.

A determination of buffer, wetland, and stream mitigation requirements shall be made for any General Water Quality Certification for this Nationwide and/or Regional General Permit. Design and monitoring protocols shall follow the US Army Corps of Engineers Wilmington District *Stream Mitigation Guidelines* (April 2003) or its subsequent updates. Compensatory mitigation plans shall be submitted to the Division for written approval as required in those protocols. The mitigation plan must be implemented and/or constructed before any impacts occur on site. Alternatively, the Division will accept payment into an in-lieu fee program or a mitigation bank. In these cases, proof of payment shall be provided to the Division before any impacts occur on site.

## Water Quality Certification No. 3893

12. Relocated stream designs should include the same dimensions, patterns, and profiles as the existing channel (or a stable reference reach if the existing channel is unstable), to the maximum extent practical. The new channel should be constructed in the dry and water shall not be turned into the new channel until the banks are stabilized. Vegetation used for bank stabilization shall be limited to native woody species, and should include establishment of a 30-foot wide wooded and an adjacent 20-foot wide vegetated buffer on both sides of the relocated channel to the maximum extent practical. A transitional phase incorporating appropriate erosion control matting materials and seedling establishment is allowable, however matting that incorporates plastic mesh and/or plastic twine shall not be used in wetlands, riparian buffers or floodplains as recommended by the North Carolina Sediment and Erosion Control Manual. Rip-rap, A-Jacks, concrete, gabions or other hard structures may be allowed if it is necessary to maintain the physical integrity of the stream; however, the applicant must provide written justification and any calculations used to determine the extent of rip-rap coverage. Please note that if the stream relocation is conducted as a stream restoration as defined in the US Army Corps of Engineers Wilmington District, April 2003 *Stream Mitigation Guidelines* (or its subsequent updates), the restored length may be used as compensatory mitigation for the impacts resulting from the relocation.
13. All temporary fill and culverts shall be removed and the impacted area returned to natural conditions within 60 days of the determination that the temporary impact is no longer necessary. The impacted areas shall be restored to original grade, including each stream's original cross sectional dimensions, plan form pattern, and longitudinal bed and bed profile, and the various sites shall be stabilized with natural woody vegetation (except for the approved maintenance areas) and restored to prevent erosion.
14. Pipes shall be installed under the road or causeway in all streams to carry at least the 25-year storm event as outlined in the most recent edition of the *North Carolina Sediment and Erosion Control Planning and Design Manual* or the *North Carolina Surface Mining Manual* so as not to restrict stream flow during use of this General Certification.
15. If an environmental document is required under the National or State Environmental Policy Act (NEPA or SEPA), then this General Certification is not valid until a Finding of No Significant Impact (FONSI) or Record of Decision (ROD) is issued by the State Clearinghouse.
16. In the twenty (20) coastal counties, the appropriate DWQ Regional Office must be contacted to determine if Coastal Stormwater Regulations will be required.
17. This General Certification does not relieve the applicant of the responsibility to obtain all other required Federal, State, or Local approvals.
18. The applicant/permittee and their authorized agents shall conduct all activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act), and any other appropriate requirements of State and Federal Law. If the Division determines that such standards or laws are not being met, including failure to sustain a designated or achieved use, or that State or Federal law is being violated, or that further conditions are necessary to assure compliance, then the Division may reevaluate and modify this General Water Quality Certification.
19. When written authorization is required for use of this certification, upon completion of all permitted impacts included within the approval and any subsequent modifications, the applicant shall be required to return the certificate of completion attached to the approval. One copy of the certificate shall be sent to the DWQ Central Office in Raleigh at 1650 Mail Service Center, Raleigh, NC, 27699-1650.



## Water Quality Certification No. 3893

20. Additional site-specific conditions, including monitoring and/or modeling requirements, may be added to the written approval letter for projects proposed under this Water Quality Certification in order to ensure compliance with all applicable water quality and effluent standards.
21. This certification grants permission to the director, an authorized representative of the Director, or DENR staff, upon the presentation of proper credentials, to enter the property during normal business hours.

This General Certification shall expire on the same day as the expiration date of the corresponding Nationwide and/or Regional General Permit. The conditions in effect on the date of issuance of Certification for a specific project shall remain in effect for the life of the project, regardless of the expiration date of this Certification.

Non-compliance with or violation of the conditions herein set forth by a specific project may result in revocation of this General Certification for the project and may also result in criminal and/or civil penalties.

The Director of the North Carolina Division of Water Quality may require submission of a formal application for Individual Certification for any project in this category of activity if it is determined that the project is likely to have a significant adverse effect upon water quality, including state or federally listed endangered or threatened aquatic species, or degrade the waters so that existing uses of the wetland or downstream waters are precluded.

Public hearings may be held for specific applications or group of applications prior to a Certification decision if deemed in the public's best interest by the Director of the North Carolina Division of Water Quality.

Effective date: March 19, 2012

DIVISION OF WATER QUALITY

By



Charles Wakild, P.E.

Director

*History Note: Water Quality Certification (WQC) Number 3893 issued March 19, 2012 replaces WQC Number 3688 issued November 1, 2007; WQC Number 3634 issued March 19, 2007; WQC Number 3366 issued March 18, 2002; WQC Number 3114 issued February 11, 1997; and WQC Number 2727 issued May 1, 1992. This General Certification is rescinded when the Corps of Engineers reauthorizes any of the corresponding Nationwide and/or Regional General Permits or when deemed appropriate by the Director of the Division of Water Quality.*



North Carolina Department of Environment and Natural Resources

Pat McCrory  
Governor

Donald R. van der Vaart  
Secretary

August 10, 2015

N.C. Department of Transportation  
1598 Mail Service Center  
Raleigh, NC 27699-1598

Dear Sir or Madam:

The enclosed permit constitutes authorization under the Coastal Area Management Act, and where applicable, the State Dredge and Fill Law, for you to proceed with your project proposal. The original (buff-colored form) is retained by you and it must be available on site when the project is inspected for compliance. Please sign both the original and the copy and return the copy to this office in the enclosed envelope. Signing the permit and proceeding means you have waived your right of appeal described below.

If you object to the permit or any of the conditions, you may request a hearing pursuant to NCGS 113A-121.1 or 113-229. Your petition for a hearing must be filed in accordance with NCGS Chapter 150B with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27611-6714, (919) 733-2698 within twenty (20) days of this decision on your permit. You should also be aware that another qualified party may submit an objection to the issuance of this permit within twenty (20) days.

The project plan is subject to those conditions appearing on the permit form. Otherwise, all work must be carried out in accordance with your application. Modifications, time extensions, and future maintenance requires additional approval. Please read your permit carefully prior to starting work and review all project plans, as approved. If you are having the work done by a contractor, it would be to your benefit to be sure that he fully understands all permit requirements.

From time to time, Department personnel will visit the project site. To facilitate this review, we request that you complete and mail the enclosed Notice Card just prior to work initiation. However, if questions arise concerning permit conditions, environmental safeguards, or problem areas, you may contact Department personnel at any time for assistance. By working in accordance with the permit, you will be helping to protect our vitally important coastal resources.

Sincerely,

Douglas V. Huggett  
Major Permits and Consistency Manager  
N.C. Division of Coastal Management

Enclosure

Permit Class  
**MODIFICATION/MAJOR**

Permit Number  
**106-12**

STATE OF NORTH CAROLINA  
Department of Environment and Natural Resources  
and  
Coastal Resources Commission

# Permit

for

Major Development in an Area of Environmental Concern  
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

Issued to N.C. Department of Transportation, 1598 Mail Service Center, Raleigh, NC 27699-1598

Authorizing development in Dare County at Pea Island Breach Site (aka New Inlet) on  
NC Highway 12, as requested in the permittee's application dated 6/19/15, including the attached AEC Hazard  
Notice dated 6/22/15, and the attached workplan drawings (21) as described in Condition No. 1 below.

This permit, issued on July 28, 2015, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

### TIP No. B-2500AB

1) Unless specifically altered herein, all work authorized by this Major Modification shall be carried out in accordance with the following attached workplan drawings:

- Wetland and surface water impacts drawings (10): 2 dated 7/15/15; 2 dated 6/18/15; 3 dated 6/15/15; 2 dated 6/26/15; and 1 dated 6/17/15.
- Roadway design drawings (11): 2 dated 7/15/15; 9 dated 6/18/15.

**NOTE:** The specific development being permitted does not preclude the remainder of the B-2500 project being built in the Pamlico Sound provided that future development will be constructed in a way that avoids and minimizes impacts to AECs.

**(See attached sheets for Additional Conditions)**

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must cease when the permit expires on

**No expiration date, pursuant to GS 136-44.7B**

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DENR and the Chairman of the Coastal Resources Commission.

  
for

Braxton C. Davis, Director  
Division of Coastal Management

This permit and its conditions are hereby accepted.



for Richard W. Hancock, P.E. Signature of Permittee

**ADDITIONAL CONDITIONS**

- NOTE:** This Major Modification authorizes TIP No. B-2500AB, replacement of the existing 650 foot two-lane temporary bridge over the Pea Island Breach Site (aka New Inlet) and related approaches with a new 2,350 foot long two-lane temporary bridge and related approaches. This Major Modification replaces the modifications to Permit No. 106-12 which were issued on 4/26/13, 10/17/13, and 4/22/14.
- 2) In accordance with T15A:07H.0306(k), the authorized structures shall be relocated or dismantled when they become imminently threatened by changes in shoreline configuration. The structures shall be relocated or dismantled within two years of the time when they become imminently threatened, and in any case upon their collapse or subsidence. However, if natural shoreline recovery or beach re-nourishment takes place within two years of the time the structures become imminently threatened, so that the structures are no longer imminently threatened, then they need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under Rule T15A:07H.0308(a)(2).
  - 3) In accordance with G.S. 113A-115.1(b)(i) and 15A NCAC 07H .0308(a)(1)(H), this major modification authorizes scour protection stones and sheet pile retaining walls that are expressly depicted on the attached workplan drawings. These scour protection stones and sheet pile retaining walls shall be removed in their entirety once they are no longer necessary.
  - 4) The placement of scour protection stone around the bridge abutments, and the placement of rock rip rap at the base of the concrete sheet pile walls, shall be limited to the areas indicated on the attached workplan drawings. The scour protection stone and rock riprap shall be free from loose dirt or any pollutant except in trace quantities.
  - 5) In accordance with the permittee's e-mail dated 6/29/15, the permittee may retain the existing steel sheeting at both existing temporary bridge abutments as well as the existing rock/slope-stabilization sandbags at the south abutment for protective engineering purposes. The existing steel sheeting, rock, and slope-stabilization sandbags shall be removed if and when the new temporary bridge authorized by this Major Modification is removed in the future. However, if the permittee or DCM determine that the existing steel sheeting, rock, and/or slope-stabilization sandbags have become an obstruction before the new temporary bridge authorized by this Major Modification is removed, then the permittee shall coordinate with DCM to examine removal options under a quicker timeframe.
  - 6) With the exception of the structures specifically stated in Conditions No. 4 and 5 of this Major Modification, upon completion of the work authorized by this Major Modification, all temporary structures and all remnant existing structures shall be removed in their entirety and disposed of at an approved high ground location as soon as practicable.
  - 7) In accordance with commitments made by the permittee, the development that was previously but no longer authorized for B-2500 Phase IIA by DCM in modifications of CAMA Permit No 106-12 on 4/26/13, 10/17/13, and 4/22/14, will be removed and restored to natural elevations prior to the completion of TIP No. B-2500AB.
  - 8) All backfill material shall be obtained from a high ground source. No unconfined backfill shall be discharged into waters of the State.

**ADDITIONAL CONDITIONS**

- 9) All construction and demolition access shall be through the use of any authorized temporary work bridges, temporary detour roadway, the partially constructed new bridge, and/or existing high ground areas.
- 10) If the Pea Island Breach Site is closed and surface water is not present, timber mats may be used within the same footprint as the area that is approved on the attached workplan drawings for temporary work bridges.
- 11) All equipment and associated materials, including any timber mats, located within the Pea Island Breach Site shall be removed within 12 hours of receiving a weather forecast that suggests the Pea Island Breach Site may become inundated with water from the ocean or sound.
- 12) The authorized timber mats shall not result in any additional permanent or temporary impacts to wetlands or waters of the State, without permit modification.
- 13) Storage of equipment and materials within the Pea Island Breach Site shall be limited to only those items that will be used readily and only for the current tasks at hand.
- 14) Construction staging areas shall be located only in upland areas, and not in wetlands or waters of the State.
- 15) No vegetated wetlands or waters of the State shall be excavated, without additional authorization.
- 16) No fill material shall be placed at any time in any vegetated wetlands or surrounding waters outside of the alignment of the areas indicated on the attached workplan drawings, without permit modification.
- 17) All temporary fill in wetlands shall be placed on geo-textile fabric to facilitate the total removal upon completion of the project.
- 18) All fill material shall be clean and free of any pollutants except in trace quantities.
- 19) Live concrete shall not be allowed to contact waters of the State or water that will enter waters of the State.
- 20) The temporary placement and/or double handling of any fill material within wetlands or waters of the State is not authorized, with the exception of that fill necessary for the construction of any temporary work bridges and associated materials. This condition also applies to the removal of the existing temporary and remnant development and associated materials.
- 21) All reasonable efforts shall be made to contain all debris and excess materials associated with the removal of the existing and construction of the new bridge, temporary work bridges, and other existing structures, with the intent that materials/debris do not enter wetlands and waters of the State, even temporarily.

**ADDITIONAL CONDITIONS****Installation and Removal of Bridge Piles and Steel Sheet Piling**

- 22) The installation and removal of the piles for the new bridge, existing bridge, and any temporary work bridges, shall be accomplished by jetting, pile driving and/or the use of a vibratory hammer. Should the permittee and/or its contractor desire to utilize another type of pile installation, such as drilled shaft construction, additional authorization from DCM shall be required.

**NOTE:** The jetting operation will require the use of pumping and water intake stations at three designated locations: (1) Wetland Site 10, between Station 3170 and Station 3173, in the permanent easement at the Pea Island Breach Site; (2) Wetland Site 17 at a location not yet specified; and (3) Wetland Site 16, Station 3136, at the Refuge boat ramp temporary easement.

- 23) The permittee shall coordinate with the United States Fish and Wildlife Service (USFWS) staff to determine the specific location of the Site 17 jetting water intake pump and associated piping. DCM shall be notified in writing upon selection of the final location of the Site 17 jetting water intake site.
- 24) The permittee shall exercise all available precautions to ensure that the authorized jetting water intake structures and associated equipment do not pose a hazard to navigation.
- 25) The jetting water intake piping shall be attached to temporary wooden stakes with guy lines to limit pipe swing in order to ensure the authorized piping does not pose a hazard to navigation. The piping shall also be marked with floating buoys at every 100' to clearly identify it in the water.
- 26) Jetting intake screens shall be installed to minimize impacts to fish species. The intake screens shall be inspected and serviced daily during periods when jetting operations are taking place.
- 27) The jetting water intake pumps shall not be operated if adjacent water levels fall 2.0 feet below the normal water level elevation.
- 28) The permittee shall continue to coordinate with appropriate resource agencies to identify and implement additional practicable methods to minimize impacts to fish species from the water intakes during jetting.
- 29) In accordance with commitments made by the permittee, all jetting that occurs within the Pea Island Breach Site will occur at ebb tide.
- 30) In accordance with commitments made by the permittee, all jetting spoils shall be disposed of within the 100-foot transportation easement within the Pea Island National Wildlife Refuge (PINWR) unless the PINWR accepts the material for Refuge use. Jetting spoils may also be disposed of at an approved upland disposal site.
- 31) All reasonable efforts shall be made to contain jetting spoils and keep them from entering wetlands or areas containing submerged aquatic vegetation.
- 32) Pilings from the existing temporary bridge and any temporary work bridges shall be removed in their entirety, except that in the event that a bridge piling breaks during removal and cannot be removed in its entirety, DCM shall be notified to determine an appropriate course of action.

**ADDITIONAL CONDITIONS**

- 33) According to the permittee, three existing test piles were previously installed during geotechnical investigations, and were designed to remain as permanent features of TIP No. B-2500 Phase IIA. Due to the depth and size of these three existing test piles, as well as safety concerns to the traveling public and practicability, the permittee has stated that these three existing test piles cannot be removed in their entirety at this time. Therefore, in accordance with commitments made by the permittee, the permittee shall cut the piles 1-foot below ground or deeper if groundwater allows. At some point in the future, if the permittee or DCM determines that the remaining portions of the piles have become an obstruction, the permittee shall coordinate with DCM to examine removal options of the exposed portions.
- 34) The permittee shall provide DCM with detailed information depicting the location of the three existing test piles.

**Impacts to Wetlands and Waters of the State**

**NOTE:** TIP No. B-2500AB will impact approximately 717 square feet of Coastal Wetlands Area of Environmental Concern (AEC) due to temporary fill and approximately 218 square feet of Coastal Wetland AEC due to hand clearing. In addition, if the Pea Island Breach Site is open and surface water is present, TIP No. B-2500AB will impact approximately 15,333 square feet of surface waters due to temporary fill.

**NOTE:** Due to the significant reduction in Coastal Wetland AEC impacts, compensatory mitigation is no longer required for the impacts associated with this Major Modification.

**NOTE:** Impacts previously but no longer authorized for TIP No. B-2500 Phase IIA by previous modifications that were not constructed are as follows: <0.01 acres of permanent fill in Coastal Wetlands; <0.01 acres of hand clearing in Coastal Wetlands; 0.15 acres of temporary impacts to surface waters; and 0.026 acres of permanent impacts to surface waters.

**NOTE:** Impacts previously but no longer authorized that had already been incurred by TIP No. B-2500 Phase IIA at the time a stop work order was issued by the permittee on September 15, 2014 for the TIP No. B-2500AB project are as follows: 1.12 acres of temporary fill in wetlands (0.54 acres of Coastal Wetland and 0.58 acres of 404 wetlands); 0.40 acres of hand clearing in wetlands (0.13 acres in Coastal Wetlands and 0.27 acres in 404 wetlands); 0.013 acres of permanent surface water impacts; and 0.093 acres of temporary surface water impacts. These impacts are indicated in red font on the "As Impacted" wetland and surface water impacts drawings (55) dated 6/2/15.

- 35) There shall be no clearing of wetlands outside of the areas indicated on the attached workplan drawings without prior approval from DCM.
- 36) Wetland areas to be temporarily impacted by clearing shall not be grubbed, without additional authorization from the Division.

**ADDITIONAL CONDITIONS**

- 37) Due to the possibility that compaction due to temporary roadway fill, jetting intake pumps and pipes, hand clearing, and/or other site alterations might prevent the temporary Coastal Wetland impact areas from re-attaining pre-project functions, the permittee shall provide an annual update on the Coastal Wetland areas temporarily impacted by the TIP No. B-2500 Phase IIA and TIP No. B-2500AB projects. This annual update shall consist of photographs and a brief written report on the progress of these temporarily impacted areas in re-attaining their pre-project functions. Within three years after completion of TIP No. B-2500AB, the permittee shall hold an agency field meeting with DCM to determine if the Coastal Wetland areas temporarily impacted by this project have re-attained pre-project functions. If at the end of three years DCM determines that the Coastal Wetland areas temporarily impacted by the project have not re-attained pre-project functions, DCM will determine whether compensatory mitigation shall be required.

**Historical and Cultural Resource Protection**

**NOTE:** A Programmatic Agreement dated 11/15/10 exists between the Federal Highway Administration, the Advisory Council on Historic Preservation, the N.C. Department of Transportation (NCDOT), and the N.C. State Historic Preservation Office (SHPO) for the project and is included as Appendix D in the Record of Decision dated 12/20/10.

**Threatened and Endangered Species Protection**

- 38) The permittee shall include the N.C. Wildlife Resources Commission (WRC) when it works with other appropriate resource agencies to determine other areas near project construction where night lighting would need to be avoided or limited, as committed to by the permittee in Project Commitment #11 of the Environmental Assessment dated 2/12/13.
- 39) In accordance with commitments made by the permittee, the discretionary measures for the piping plover and three species of sea turtles that include the terms and conditions outlined in the 7/10/08 USFWS Biological and Conference Opinions shall be implemented.

**General**

- NOTE:** In accordance with commitments made by the permittee, as a result of this Major Modification, the authorized project will not result in the loss of motor vehicle access to the existing public boat ramp and public parking lot approximately 3,100 feet south of the Pea Island Breach Site. This facility will continue to be used as a staging area for the project, as well as a jetting intake location, however it will be fully restored upon the completion of the work authorized by this Major Modification.
- 40) The permittee shall provide the public with adequate notice that access to the existing public boat ramp and public parking lot approximately 3,100 feet south of the Pea Island Breach Site will be closed during construction. The notice shall include an estimate of the amount of time that access to the public boat ramp will be closed.



**ADDITIONAL CONDITIONS**

- 41) The construction of any new public access facility shall require additional authorization from DCM, including the one referenced in the permit application as required by Condition Number 12 of the PINWR Permit No 2013-003.
- 42) The new temporary bridge shall maintain the present height of the existing temporary bridge, approximately 15 feet above the mean high water elevation.
- 43) The permittee shall install and maintain at his expense any signal lights or signals prescribed by the U.S. Coast Guard, through regulation or otherwise, on the authorized facilities.
- 44) No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work following completion of construction and demolition activities.
- 45) This project shall conform to all requirements of the N.C. Sedimentation Pollution Control Act and NCDOT's Memorandum of Agreement with the N.C. Division of Energy, Mineral, and Land Resources.
- 46) If it is determined that additional permanent and/or temporary impacts are necessary that are not shown on the attached workplan drawings or described in the authorized permit application, a permit modification and/or additional authorization from DCM shall be required. In addition, any changes in the approved plan may also require a permit modification and/or additional authorization from DCM. The permittee shall contact a representative of DCM prior to commencement of any such activity for this determination and any permit modification.
- 47) The permittee shall exercise all available precautions in the day-to-day operations of the facility to prevent waste from entering the adjacent waters and wetlands.
- 48) Development authorized by this Major Modification shall only be conducted on lands owned by the NCDOT and/or its right-of-ways and/or easements.
- 49) The permittee and/or his contractor shall contact the DCM Transportation Project Field Representative in Elizabeth City at (252) 264-3901 to request a pre-construction conference prior to project initiation.
- 50) Nothing in this Major Modification authorizes any activity that has not received approval from the National Park Service (NPS) and/or the USFWS for work within the Cape Hatteras National Seashore and/or PINWR. The proposed work shall not commence until the permittee has been issued Special Use Permit(s) from the NPS and/or the USFWS, if required, and a copy of the Special Use Permit(s) are received by DCM.

**NOTE:** The Division of Water Resources (DWR) notified the permittee on 6/22/15 that impacts of the proposed project (DWQ Project No. 20130144 v.5) are below the thresholds which generally require written concurrence from DWR. Therefore, provided the conditions in General Water Quality Certification No. 3893 can be met, no further correspondence from DWR shall be necessary at this time.

**NOTE:** The U.S. Army Corps of Engineers authorized the proposed project under Nationwide Permit Number 33 (COE Action ID No. SAW-2013-01039), which was issued on 7/2/15.

**ADDITIONAL CONDITIONS**

**NOTE:** This Major Modification does not eliminate the need to obtain any additional state, federal or local permits, approvals or authorizations that may be required.

- 51) This Major Modification shall be attached to the original of Permit No. 106-12, which was issued on 9/19/12, and copies of both documents shall be readily available on site when a Division representative inspects the project for compliance.
- 52) All conditions and stipulations of the active permit remain in force under this Major Modification unless specifically altered herein.

**NOTE:** An application processing fee of \$475 was received by DCM for this project.

Permit Class  
NEW

Permit Number  
106-12

STATE OF NORTH CAROLINA  
Department of Environment and Natural Resources  
and  
Coastal Resources Commission

# Permit

for

Major Development in an Area of Environmental Concern  
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

Issued to N.C. Department of Transportation, 1598 Mail Service Center, Raleigh, NC 27699-1598

Authorizing development in Dare County at Oregon Inlet, Herbert C. Bonner Bridge on NC Highway 12, as requested in the permittee's application dated 6/21/12, including the attached AEC Hazard Notice dated received on 7/17/12, and the attached workplan drawings (81) as described in Condition No. 1 below.

This permit, issued on September 19, 2012, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

### TIP No. B-2500, Phase I, Bridge Replacement

- 1) All work authorized by this permit shall be carried out in accordance with the following attached workplan drawings, except as modified herein:

Wetlands and Streams Impacts Drawings (41): 25 dated 5/23/12; 8 dated 5/24/12; 2 dated 6/13/12; 2 dated 6/5/12; 2 dated 5/31/12; 1 dated 7/11/12; and 1 dated 6/4/12.

Roadway Design Drawings (40): 29 dated 6/1/12; 4 dated 6/5/12; 4 dated 6/13/12; 2 dated 11/5/09; and 1 dated 9/27/06.

### (See attached sheets for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must cease when the permit expires on

### No expiration date, pursuant to GS 136-44.7B

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DENR and the Chairman of the Coastal Resources Commission.



Braxton C. Davis, Director  
Division of Coastal Management

This permit and its conditions are hereby accepted.



Signature of Permittee

**ADDITIONAL CONDITIONS**

- NOTE:** The North Carolina Department of Transportation (NCDOT) project TIP No. B-2500 authorized by this permit extends for approximately 15 miles from the southern end of Bodie Island to the community of Rodanthe. This permit only authorizes construction of Phase I of the TIP No. B-2500 project. Prior to initiating any construction on the remaining phases of this project, the permittee must receive additional authorization from the N.C. Division of Coastal Management (DCM).
- 2) In accordance with T15A:07H.0306(k), the authorized structures shall be relocated or dismantled when they become imminently threatened by changes in shoreline configuration. The structures shall be relocated or dismantled within two years of the time when they become imminently threatened, and in any case upon their collapse or subsidence. However, if natural shoreline recovery or beach re-nourishment takes place within two years of the time the structures become imminently threatened, so that the structures are no longer imminently threatened, then they need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under Rule T15A:07H.0308(a)(2).
  - 3) Unless specifically altered herein, any mitigative measures or environmental commitments specifically made by the permittee in the CAMA permit application, the NEPA/404 Merger Process, and/or the Record of Decision document dated December 20, 2010 shall be implemented, regardless of whether or not such commitments are addressed by individual conditions of this permit.
  - 4) The temporary placement and double handling of any excavated or fill material within waters or vegetated wetlands is not authorized, with the exception of that fill necessary for the jetting operation and the construction of the temporary work trestle. This condition also applies to the materials stored on work platforms and removal of the existing bridge, culvert, roadway asphalt, and associated materials.
  - 5) No excavation or filling shall take place at any time in any vegetated wetlands or surrounding waters outside of the alignment of the areas indicated on the attached workplan drawings, without permit modification.
  - 6) Material excavated from the project site may be used in fill areas associated with the project once properly dewatered. Otherwise, the material shall be removed from the site and taken to a high ground location.
  - 7) All excavated materials shall be confined above normal high water and landward of regularly or irregularly flooded wetlands behind adequate dikes or other retaining structures to prevent spillover of solids into any wetlands or surrounding waters.
  - 8) All fill material shall be clean and free of any pollutants except in trace quantities.
  - 9) Live concrete shall not be allowed to contact waters of the State or water that will enter waters of the State.
  - 10) Construction staging areas shall be located only in upland areas, and not in wetlands or waters of the State.

**ADDITIONAL CONDITIONS**

- 11) All construction access shall be through the use of the existing bridge, authorized temporary work trestles and platforms, the partially constructed new bridge, existing high ground areas, and/or barges.
- 12) Barges used for construction and demolition access shall be removed immediately when they are no longer needed for construction and demolition.
- 13) Dredging in any manner, including "kicking" with boat propellers is not authorized, without permit modification.
- 14) All reasonable efforts shall be made to contain all debris and excess materials associated with the removal of the existing and construction of the new bridge, temporary work trestle, and other existing structures, with the intent that materials/debris do not enter wetlands or Waters of the State, even temporarily, with the exception of any materials that may be utilized by the N.C. Division of Marine Fisheries (DMF) for artificial reef construction.
- 15) The temporary work trestle and the temporary extension and reconstruction of the existing roadway that leads to the emergency ferry landing on the south side of Oregon Inlet for barge access, including the work trestle/dock, shall be removed in their entirety and disposed of at an approved high ground location within 90 days after the structure(s) is no longer needed.
- 16) The placement of riprap shall be limited to the areas indicated on the attached workplan drawings. The riprap material shall be free from loose dirt or any pollutant except in trace quantities.

**Installation and Removal of Piles**

- 17) The installation and removal of the piles for the new bridge, existing bridge, temporary work trestles and platforms, and pipe piles at the casting yard, shall be accomplished by jetting, pile driving and/or the use of a vibratory hammer, as specified in the permit application. Should the permittee and/or its contractor desire to utilize another type of pile installation, such as drilled shaft construction, additional authorization from DCM shall be required.
- 18) In accordance with commitments made by the permittee in the permit application, a primary and secondary containment system shall be used to capture as much of the jetting water as possible and allow for re-use of the water within the jetting operation for bridge bents 47 through 78. Excess spoil shall be disposed of according to the NCDOT borrow/waste procedures at an approved off-site location.
- 19) All reasonable efforts shall be made to contain jetting spoils and keep them from entering wetlands or areas containing submerged aquatic vegetation.
- 20) Pilings in open water from the existing bridge and the temporary work trestles shall be removed in their entirety, except that in the event that a bridge piling breaks during removal and cannot be removed in its entirety, DCM shall be notified to determine an appropriate course of action. Existing bridge pilings in SAV areas and wetlands shall be cut off at the mudline.

**ADDITIONAL CONDITIONS**

**Demolition of Existing Bridge and Associated Structures**

- 21) As proposed in the permit application package for the proposed project, the permittee shall coordinate with and provide the N.C. Division of Marine Fisheries with suitable bridge demolition material that will be placed at four existing artificial reef sites in the Atlantic Ocean.
- 22) The permittee shall remove any scour protection devices (gabion mats, sand bags, A-jacks, etc.) that are exposed on the bed of Oregon Inlet at the time of construction, with the exception of those protecting the substructure of the existing bridge that will remain in place as a fishing pier. If the permittee desires to leave any exposed scour protection devices in place other than those associated with the approved fishing pier, then additional coordination with DCM shall be required. In addition, if any scour protection devices or other remnant structures become exposed in the future, the permittee shall coordinate with DCM and other appropriate resource agencies to determine if removal is necessary.

**Retaining Walls for Abutment Fill Slope and Side Slope Protection**

- 23) The retaining walls for abutment fill slope and side slope protection shall be structurally tight so as to prevent seepage of fill materials through the structure.
- 24) The retaining walls for abutment fill slope and side slope protection shall be in place prior to any backfilling activities.
- 25) All backfill material shall be obtained from a high ground source. No unconfined backfill shall be discharged into Waters of the State.

**Utility Impacts**

**NOTE:** The construction of the new bridge will also require the relocation of electric, telephone, and water utility lines with associated hand and mechanized clearing, including the relocation of an electric riser pole. Wetland and stream impacts resulting from the utility relocations have been included in the total wetland and stream impacts for this project.

- 26) Any relocation of utility lines that is not already depicted on the attached work plan drawings shall require approval by DCM, either under the authority of this permit, or by the utility company obtaining separate authorization.

**NOTE:** Plans and specifications for the relocation and/or replacement of potable water supply lines must be submitted to the Division of Environmental Health, Public Water Supply Plan Review Section for approval prior to construction.

**ADDITIONAL CONDITIONS****Historical and Cultural Resource Protection**

**NOTE:** A Programmatic Agreement dated 11/15/10 exists between the Federal Highway Administration, the Advisory Council on Historic Preservation, NCDOT, and the N.C. State Historic Preservation Office (SHPO) for the project and is included as Appendix D in the Record of Decision dated December 20, 2010.

**Compensatory Mitigation for Impacts to Wetlands, Submerged Aquatic Vegetation and Waters of the State**

**NOTE:** This project will permanently impact approximately 0.48 acres of 404 wetlands (0.38 acres due to fill, 0.02 acres due to excavation, and 0.08 acres due to mechanized clearing) and approximately 0.03 acres of CAMA Coastal Wetlands (0.02 acres due to fill and 0.01 acres due to mechanized clearing). This project will temporarily impact approximately 0.31 acres of 404 wetlands (0.05 acres due to fill and 0.26 acres due to hand clearing) and approximately 1.04 acres of CAMA Coastal Wetlands due to fill. This project will permanently impact approximately 1 acre of surface waters and will temporarily impact approximately 3.43 acres of surface waters. This project will permanently impact approximately 2.66 acres of SAV areas due to shading and will temporarily impact approximately 2.42 acres of SAV areas due to shading. The casting yard for this project will temporarily impact approximately 0.01 acres of surface waters.

- 27) Except as specified by conditions of this permit, wetland mitigation shall be carried out as described in the document titled "Revised Draft Wetland Mitigation Plan NC 12 Replacement of Herbert C. Bonner Bridge (Bridge No. 11) over Oregon Inlet" dated May 17, 2012.

**NOTE:** The permittee is strongly encouraged to coordinate with the N.C. Natural Heritage Program and the National Park Service (NPS) throughout implementation of the compensatory wetland mitigation within the Bodie Island Lighthouse Pond Significant Natural Heritage Area. The permittee should adhere to any recommendations regarding protection of state and federally listed species within the Bodie Island Lighthouse Pond Significant Natural Heritage Area.

- 28) DCM does not consider the SAV mitigation plan submitted with the permit application to be a final mitigation plan. Therefore, prior to initiating construction within any area containing SAV's, the permittee shall submit a final SAV mitigation plan to DCM, as well as other appropriate resource agencies. Approval of this plan shall be obtained from DCM prior to initiating construction activities in these SAV areas. The plan shall identify the location for the SAV mitigation site and the location of any SAV donor beds.

**ADDITIONAL CONDITIONS**

**NOTE:** The permittee is encouraged to incorporate the following considerations into the final SAV mitigation plan: a) utilize multiple locations to allow more chance for success; b) include openings of at least 5 feet for every 100 feet of structure length if breakwaters are utilized to allow fish to continue to use these areas; c) determine if any breakwaters or other structures will need to be removed after success criteria are met; d) develop a monitoring plan for the SAV mitigation site after any breakwaters or other structures are removed to determine long-term success; and e) define success criteria to include a higher percentage of SAV coverage 5 years after any breakwaters or other structures are removed

- 29) Any subsequent changes to the wetland and submerged aquatic vegetation mitigation plans authorized by this permit may require additional authorization from DCM.
- 30) An as-built report for the SAV mitigation site shall be submitted to DCM within 90 days after the mitigation site has been constructed.
- 31) Annual monitoring reports for the submerged aquatic vegetation mitigation site shall be provided to DCM for a minimum of five years after mitigation site construction, and for 5 years after the removal of any breakwaters or other structures. Annual monitoring reports shall include an evaluation of data, and an assessment of whether success criteria are being met. Progress reports shall also be provided upon request.

**NOTE:** This permit does not convey or imply approval of the suitability of any excess submerged aquatic vegetation mitigation credits generated by this project as compensatory mitigation for any particular future projects. The use of any portion of excess submerged aquatic vegetation mitigation credits generated by this project as compensatory mitigation for future projects shall be approved on a case-by-case basis during the permit review and/or consistency process.

- 32) Due to the possibility that compaction from jetting containment structures, shading under the work trestle, trenching of electric lines, mechanized clearing, and/or other site alterations might prevent the temporary Coastal Wetland and SAV impact areas from re-attaining pre-project functions, the permittee shall provide an annual update on the Coastal Wetland and SAV areas temporarily impacted by this project. This annual update shall consist of photographs and a brief written report on the progress of these temporarily impacted areas in re-attaining their pre-project functions. Within three years after project completion, the permittee shall hold an agency field meeting with DCM to determine if the Coastal Wetland and SAV areas temporarily impacted by this project have re-attained pre-project functions. If at the end of three years DCM determines that the Coastal Wetland and SAV areas temporarily impacted by the project have not re-attained pre-project functions, DCM will determine whether compensatory mitigation shall be required.
- 33) There shall be no clearing or grubbing of wetlands outside of the areas indicated on the attached workplan drawings without prior approval from DCM.
- 34) Construction mats shall be utilized to support equipment within wetland areas to minimize temporary wetland impacts during utility relocations as specified on the attached workplan drawings. These mats shall be removed immediately following project completion.



**ADDITIONAL CONDITIONS**

**Threatened and Endangered Species Protection**

- 35) In accordance with commitments made by the permittee, the discretionary measures for the piping plover and three species of sea turtles that are described in the permit application that include the terms and conditions outlined in the July 10, 2008 United States Fish and Wildlife Service (USFWS) Biological and Conference Opinions shall be implemented.
- 36) In accordance with commitments made by the permittee, all conditions outlined in the USFWS Guidelines for Avoiding Impacts to the West Indian Manatee: Precautionary Measures for Construction Activities in North Carolina Waters shall be implemented.

**Sedimentation and Erosion Control**

- 37) Appropriate sedimentation and erosion control devices, measures, or structures shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses, and property (e.g. silt fence, diversion swales or berms, etc.).
- 38) This project shall conform to all requirements of the N.C. Sedimentation Pollution Control Act and NCDOT's Memorandum of Agreement with the Division of Land Resources.

**Stormwater Management**

**NOTE:** The N.C. Division of Water Quality (DWQ) confirmed in a letter dated 7/19/12 (SW7120514) that the subject project is excluded from State Stormwater permitting requirements as set forth in Section 2(d)(1) of Session Law 2008-211, effective October 1, 2008, and the stormwater rules under Title 15A NCAC 2H .1000, as amended.

**General**

- 39) The permittee shall exercise all available precautions in the day-to-day operations of the facility to prevent waste from entering the adjacent waters and wetlands.
- 40) If it is determined that additional permanent and/or temporary impacts are necessary that are not shown on the attached workplan drawings or described in the authorized permit application, a permit modification and/or additional authorization from DCM shall be required. In addition, any changes in the approved plan may also require a permit modification and/or additional authorization from DCM. The permittee shall contact a representative of DCM prior to commencement of any such activity for this determination and any permit modification.

**ADDITIONAL CONDITIONS**

- 41) In accordance with the commitments made by the permittee, no permanent lighting shall be installed on the portion of the existing bridge to be retained as a fishing pier.
- 42) The permittee and/or his contractor shall meet on site with a DCM representative prior to project initiation.
- 43) Development authorized by this permit shall only be conducted on lands owned by the NCDOT and/or its Right-of-Ways and/or easements.
- 44) Nothing in this permit authorizes any activity that has not received approval from NPS and USFWS for work within the Cape Hatteras National Seashore and Pea Island National Wildlife Refuge. The proposed work shall not commence until the permittee has been issued Special Use Permits from the NPS and the USFWS, and a copy of the Special Use Permits are received by DCM.
- 45) The N.C. Division of Water Quality (DWQ) authorized the proposed project on 9/7/12 (DWQ Project No. 20120629) under Individual Water Quality Certification No. 003939. Any violation of the Certification approved by DWQ shall be considered a violation of this CAMA permit.

**NOTE:** The U.S. Army Corps of Engineers is reviewing this project as an Individual Permit (Action ID No. SAW-1993-03077).

**NOTE:** This permit does not eliminate the need to obtain any additional state, federal or local permits, approvals or authorizations that may be required, including any necessary for the casting yard, aerial spraying of herbicides at the approved wetland mitigation site, and/or disposal of suitable material on artificial reefs.

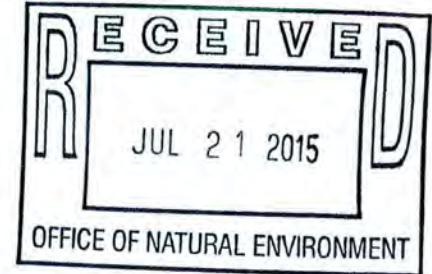


# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Alligator River National Wildlife Refuge  
Pea Island National Wildlife Refuge  
Post Office Box 1969  
Manteo, North Carolina 27954  
(252) 473-1132 473-1668 (fax)

July 16, 2015



Mr. Rodger Rochelle  
N. C. Department of Transportation  
Project Development and Environmental Analysis  
1598 Mail Service Center  
Raleigh, NC 27699-1598

**Ref: SUP # 2013-003, Amendment 5:** B-2500 Phase IIAB of the NC-12  
Transportation Management Plan: Extending the Temporary Construction Easement  
granted for construction of the Phase IIa Bridge at New Inlet, Pea Island National  
Wildlife Refuge

Dear Mr. Rochelle:

In a letter dated June 19, 2015, the N. C. Department of Transportation (NCDOT) requested modification of Special Use Permit 2013-003 to extend the Temporary Construction Easement (TCE) by adding an additional 0.135 ac to accommodate construction of the New Inlet Phase IIAB Bridge. This extended TCE occurs in 5 areas along the bridge alignment and is necessary for construction within the existing right-of-way. This request for the TCE extension would bring the total area of TCE to 3.975 acres under SUP # 2013-003. Overall, the Phase IIAB Bridge project will affect a smaller area and would result in a reduction of impacts relative to the Phase IIa Bridge. However, the TCE area cannot be reduced until bridge construction is completed and the portion of NC 12 affected by temporary detours are fully restored.

This letter is to advise you that SUP # 2013-003 is hereby amended to grant an additional TCE not to exceed 0.135 acre in the areas depicted on project plan sheets. This authorization for additional TCE is made under the following terms and conditions:

1. All other terms and conditions of SUP # 2013-003, including amendments, shall remain in effect unless otherwise modified by the Refuge Manager.
2. The only allowable use in the additional TCE is solely for the purpose of constructing the Phase IIAB Bridge.

3. All fill and any other construction materials, supplies, or equipment shall be removed from all TCE areas and these areas shall be restored to original contours and vegetation, if any, to the extent practicable.
4. In the event that bird nesting should occur within the TCE areas, nests shall be subjected to the same level of protection as any other nesting area. The Refuge shall be responsible for posting closures for bird nesting if the need arises.

If you have questions or need additional information, please contact me or Dennis Stewart at (252) 473-1132 xt 231 or [dennis\\_stewart@fws.gov](mailto:dennis_stewart@fws.gov).

Sincerely,



Mike Bryant  
Project Leader  
North Carolina Coastal National Wildlife Refuges Complex

cc Jerry Jennings, NCDOT  
Tracy Wheeler, USACE  
Cathy Brittingham, NCDCM  
Steve Thompson, NPS  
Pete Benjamin, USFWS  
Elizabeth Souheaver, USFWS-RO



# United States Department of the Interior

UNITED STATES FISH AND WILDLIFE SERVICE  
Alligator River National Wildlife Refuge  
100 Conservation Way  
Post Office Box 1969  
Manteo, NC 27954

Phone: (252) 473.1132 FAX: (252) 473.1668

September 16, 2013



RECEIVED  
Division of Highways

SEP 17 2013

Reconstruction  
Project Development and  
Environmental Analysis Branch

Richard W. Hancock, PE  
N. C. Department of Transportation  
1548 Mail Service Center  
Raleigh, NC 27699-1548

Dear Mr. Hancock:

The attached Special Use Permit is in reference to the B2500 Phase IIa bridge replacement project at New Inlet on Pea Island National Wildlife Refuge. This permit has been closely coordinated with Mr. Victor Barbour. Until today the plan was to issue the permit with Mr. Jerry Jennings name on it, but I was advised this morning that you would be the project contact.

Please sign at the two places indicated and return a signed copy to me as soon as possible. If you have questions, please contact Dennis Stewart, Refuge Biologist at (252) 473-1131 xt 231 or [dennis\\_stewart@fws.gov](mailto:dennis_stewart@fws.gov).

Sincerely,

Mike Bryant  
Project Leader  
Coastal North Carolina National Wildlife Refuges Complex

United States Department of the Interior  
U.S. Fish and Wildlife Service  
National Wildlife Refuge System  
General Special Use  
Application and Permit

OMB Control Number 1018-0102  
Expiration Date: 06/30/2014

Name of Refuge Pea Island  
Address P. O. Box 1969 Manteo, NC 27954  
Attn: (Refuge Official) Mike Bryant  
Phone # (252) 473-1131 E-mail mike\_bryant@fws.gov

### Application

(To be filled out by applicant. Note: Not all information is required for each use. See instructions at the end of the notice.)

1)  New  Renewal  Modification  Other \_\_\_\_\_

### Applicant Information

2) Full Name: Richard W. Hancock, PE 6) Phone #: 919-707-6000  
3) Organization: NC Department of Transportation 7) Fax #: \_\_\_\_\_  
4) Address: 1548 Mail Service Center 8) E-mail: rwhancock@ncdot.gov  
5) City/State/Zip: Raleigh, NC 27699-1548

9) Assistants/Subcontractors/Subpermittees: (List full names, addresses and phone #'s and specifically describe services provided if subcontractors are used.)

All work will be done under the provisions of a general private contractor. The general contractor will award subcontracts as specified in the general document or as needed to fulfill the terms and conditions of the contract/permits.

### Activity Information

10) Activity type:  Event  Wood Cutting  Group Visit  Cabin/Subsistence Cabin  Educational Activity  
 Other B2500 Phase IIa Bridge construction for NC 12 at the Pea Island (New) Inlet

11) Describe Activity: (Specifically identify timing, frequency, and how the event is expected to proceed.)

NCDOT has planned construction of a new 2.1 mile long bridge on NC 12 at the "Pea Island Inlet" site. No new right-of-way is proposed but temporary construction easements are required. Total project length is 2.7 miles. The new bridge will be a two-lane section and will have 98 spans. Drainage systems will include open scuppers on bridge spans, grate inlets and pipe systems for ramps/end spans, and roadside ditches for approach pavement. Temporary easements will be necessary for NC 12 safety, construction, and erosion/sediment control. Total amount of Refuge land temporarily impacted is about 3.84 acres. This includes temporary easements at existing parking areas for staging, slope stabilization, and access for pumping stations to provide water for jetting activities. Work at night and use of welders/torches may be necessary during construction. The Permittee and Refuge Manager shall meet as needed to establish procedures for approval other activities that may arise.

12) Activity/site occupancy timeline: (Specifically identify beginning and ending dates, site occupation timeline, hours, clean-up and other major events.)

The project time line calls for a contract award date during the fall of 2013 with contractor mobilization and construction beginning soon thereafter. The project will take 3-4 years to complete.

(Depending on the activity for which you are requesting a permit, we may ask you for the following activity information.  
Please contact the specific refuge where the activity is being conducted to determine what activity information is required.)

13) Expected number of participants:  
Children 0 Adults \_\_\_\_\_ Total \_\_\_\_\_

14) Grade level of educational group:  
Grade \_\_\_\_\_  N/A

15) Will staff time/assistance be required?  
 Yes  No  N/A

16a) Plan of Operation required?  Yes  No  N/A

16b) Plan of Operation attached?  Yes  No

17) Location: (Specifically identify location; GPS location preferred.)

Pea Island National Wildlife Refuge, Dare County, North Carolina; "Pea Island (New) Inlet" 35.684120 -75.484016

18a) Is map of location(s) required?  
 Yes  No  N/A

18b) Is map of location(s) attached?  
 Yes  No

### Insurance Coverage/Certifications/Permits

19a) Is insurance required?  
 Yes  No  N/A

19b) Insurance: (Provided carrier, type and policy number)

\_\_\_\_\_

20) Other licenses/certifications/permits required: (Specifically identify licenses, certifications, and permits.)

Clean Water Act Section 404; NC Coastal Area Management Act, Endangered Species Act compliance; Section 106 Historic Resources compliance.

### Logistics and Transportation

21) Does activity require personnel to stay overnight onsite?  Yes  No

22) Personnel involved:

Contractor will have people working day and night in crew shifts.

23) Specifically describe all equipment/gear and materials used:

Any and all equipment normally associated with bridge construction over water and land, including welders and cutting torches.

24) Transportation description(s) and license number(s) to access refuge(s): (Provide description of and specific auto license/boat/plane registration number(s).)

Standard NCDOT and contractor vehicles including transport trucks for supplies and materials.

25) Specifically describe onsite work and/or living accommodations:

Construction crews will likely be working 24 hours per day and 7 days per week.

26) Specifically describe onsite hazardous material storage or other onsite material storage space:

The NCDOT contract will require strict compliance with all OSHA as well as all other health and safety standards.

27) Signature of Applicant

Date of Application: September 16, 2013

Sign, date, and print this form and return it to the refuge for processing.  
Do not fill out information below this page.

PRINT FORM

# For Official Use Only (This section to be filled out by refuge personnel only.)

## Special Use Permit

Permit #: 2013-003

1) Date: September 16, 2013      2)  Permit Approved     Permit Denied      3) Station #: 41630

4) Additional special conditions required: (Special conditions may include activity reports, before and after photographs, and other conditions.)  
 Yes     No     N/A

Additional sheets attached:  
 Yes     No

5) Other licenses/permits required:  
 Yes     No     N/A

Verification of other licenses/permits, type:  
Corps of Engineers, NC Division of Coastal Management, NC  
Division of Water Quality

6) Insurance/certifications required:  
 Yes     No     N/A

Verification of insurance/certification, type:

7) Record of Payments:     Exempt     Partial     Full

Amount of payment: N/A      Record of partial payment: N/A

8) Bond posted:       Yes     No

This permit is issued by the U.S. Fish and Wildlife Service and accepted by the applicant signed below, subject to the terms, covenants, obligations, and reservations, expressed or implied herein, and to the notice, conditions, and requirements included or attached. A copy of this permit should be kept on hand so that it may be shown at any time to any refuge staff.

Permit approved and issued by (Signature and title):

Michael R. Bryant      Date: September 16, 2013

Permit accepted by (Signature of applicant):

J. Vito Balcer      Date: 9/27/13



## Notice

In accordance with the Privacy Act (5 U.S. C. 552a) and the Paperwork Reduction Act (44 U.S. C. 3501), please note the following information:

1. The issuance of a permit and collection of fees on lands of the National Wildlife Refuge System are authorized by the National Wildlife Refuge System Administration Act (16 U.S. C. 668dd-ee) as amended, and the Refuge Recreation Act (16 U.S. C. 460k-460k-4).
2. The information that you provide is voluntary; however submission of requested information is required to evaluate the qualifications, determine eligibility, and document permit applicants under the above Acts. It is our policy not to use your name for any other purpose. The information is maintained in accordance with the Privacy Act. All information you provide will be considered in reviewing this application. False, fictitious, or fraudulent statements or representations made in the application may be grounds for revocation of the Special Use Permit and may be punishable by fine or imprisonment (18 U.S.C. 1001). Failure to provide all required information is sufficient cause for the U.S. Fish and Wildlife Service to deny a permit.
3. No Members of Congress or Resident Commissioner shall participate in any part of this contract or to any benefit that may arise from it, but this provision shall not pertain to this contract if made with a corporation for its general benefit.
4. The Permittee agrees to be bound by the equal opportunity "nondiscrimination in employment" clause of Executive Order 11246.
5. Routine use disclosures may also be made: (a) to the U.S. Department of Justice when related to litigation or anticipated litigation; (b) of information indicating a violation or potential violation of a statute, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulations, order, or license; (c) from the record of the individual in response to an inquiry from a Congressional office made at the request of the individual (42 FR 19083; April 11, 1977); and (d) to provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal Claim against the debtor, or to consumer reporting agencies to prepare a commercial credit report for use by the Department (48 FR 54716; December 6, 1983).
6. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This information collection has been approved by OMB and assigned control number 1018-0102. The public reporting burden for this information collection varies based on the specific refuge use being requested. The relevant public reporting burden for the General Use Special Use Permit Application form is estimated to average 30 minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Comments on this form should be mailed to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MS 2042-PDM, Arlington, Virginia, 22203.

## General Conditions and Requirements

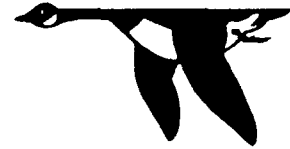
1. **Responsibility of Permittee:** The permittee, by operating on the premises, shall be considered to have accepted these premises with all facilities, fixtures, or improvements in their existing condition as of the date of this permit. At the end of the period specified or upon earlier termination, the permittee shall give up the premises in as good order and condition as when received except for reasonable wear, tear, or damage occurring without fault or negligence. The permittee will fully repay the Service for any and all damage directly or indirectly resulting from negligence or failure on his/her part, and/or the part of anyone of his/her associates, to use reasonable care.
2. **Operating Rules and Laws:** The permittee shall keep the premises in a neat and orderly condition at all times, and shall comply with all municipal, county, and State laws applicable to the operations under the permit as well as all Federal laws, rules, and regulations governing national wildlife refuges and the area described in this permit. The permittee shall comply with all instructions applicable to this permit issued by the refuge official in

charge. The permittee shall take all reasonable precautions to prevent the escape of fires and to suppress fires and shall render all reasonable assistance in the suppression of refuge fires.

3. **Use Limitations:** The permittee's use of the described premises is limited to the purposes herein specified and does not, unless provided for in this permit, allow him/her to restrict other authorized entry onto his/her area; and permits the Service to carry on whatever activities are necessary for: (1) protection and maintenance of the premises and adjacent lands administered by the Service; and (2) the management of wildlife and fish using the premises and other Service lands.
4. **Transfer of Privileges:** This permit is not transferable, and no privileges herein mentioned may be sublet or made available to any person or interest not mentioned in this permit. No interest hereunder may accrue through lien or be transferred to a third party without the approval of the Regional Director of the Service and the permit shall not be used for speculative purposes.
5. **Compliance:** The Service's failure to require strict compliance with any of this permit's terms, conditions, and requirements shall not constitute a waiver or be considered as a giving up of the Service's right to thereafter enforce any of the permit's terms or conditions.
6. **Conditions of Permit not Fulfilled:** If the permittee fails to fulfill any of the conditions and requirements set forth herein, all money paid under this permit shall be retained by the Government to be used to satisfy as much of the permittee's obligation as possible.
7. **Payments:** All payment shall be made on or before the due date to the local representative of the Service by a postal money order or check made payable to the U.S. Fish and Wildlife Service.
8. **Termination Policy:** At the termination of this permit the permittee shall immediately give up possession to the Service representative, reserving, however, the rights specified in paragraph 11. If he/she fails to do so, he/she will pay the government, as liquidated damages, an amount double the rate specified in this permit for the entire time possession is withheld. Upon yielding possession, the permittee will still be allowed to reenter as needed to remove his/her property as stated in paragraph 11. The acceptance of any fee for the liquidated damages or any other act of administration relating to the continued tenancy is not to be considered as an affirmation of the permittee's action nor shall it operate as a waiver of the Government's right to terminate or cancel the permit for the breach of any specified condition or requirement.
9. **Revocation Policy:** This permit may be revoked by the Regional Director of the Service without notice for noncompliance with the terms hereof or for violation of general and/or specific laws or regulations governing national wildlife refuges or for nonuse. It is at all times subject to discretionary revocation by the Director of the Service. Upon such revocation the Service, by and through any authorized representative, may take possession of the said premises for its own and sole use, and/or may enter and possess the premises as the agent of the permittee and for his/her account.
10. ~~Damages. The United States shall not be responsible for any loss or damage to property including, but not limited to, growing crops, animals, and machinery or injury to the permittee or his/her relatives, or to the officers, agents, employees, or any other who are on the premises from instructions or by the sufferance of wildlife or employees or representatives of the Government carrying out their official responsibilities. The permittee agrees to save the United States or any of its agencies harmless from any and all claims for damages or losses that may arise to be incident to the flooding of the premises resulting from any associated Government river and harbor, flood control, reclamation, or Tennessee Valley Authority activity.~~
11. **Removal of Permittee's Property:** Upon the expiration or termination of this permit, if all rental charges and/or damage claims due to the Government have been paid, the permittee may, within a reasonable period as stated in the permit or as determined by the refuge official in charge, but not to exceed 60 days, remove all structures, machinery, and/or equipment, etc. from the premises for which he/she is responsible. Within this period the permittee must also remove any other of his/her property including his/her acknowledged share of products or crops grown, cut, harvested, stored, or stacked on the premises. Upon failure to remove any of the above items within the aforesaid period, they shall become the property of the United States.

NB  
9/27/13

MRS  
10-17-13



**CONDITIONS FOR SPECIAL USE PERMITS & AUTHORIZED ACTIVITIES**  
**SUP 2013-003**

1. The Permittee or authorized person, and all officers, agents, employees, representatives, and clients of the Permittee or authorized person, shall comply with all Refuge, Federal, State, and local regulations and conditions that apply to the special use activity. Failure to comply with any applicable regulation or condition, and all Federal laws, rules, and regulations governing National Wildlife Refuges and the area described in the Special Use Permit (Permit) or authorizing documents may result in revocation of the Permit or authorized activity and/or criminal prosecution.
2. While engaged in a special use activity on the Refuge, the Permittee or authorized person, and his/her officers, agents, employees, or representatives, shall be in possession of a **copy** of the Permit or authorizing documents (including all attachments that contain conditions) and shall, upon request by an authorized Refuge official or by any authorized local, state, or federal law enforcement officer, display the **copy** authorizing their presence and activity on the Refuge and shall furnish any other licenses and identification documents as may be requested.
3. Entry on the Refuge during nighttime hours (i.e., ½-hour after sunset to ½-hour before sunrise) is prohibited, **unless authorized in writing by the Refuge Manager.**
4. It is unlawful to disturb, destroy, injure, collect, or take any wildlife, plant, natural object, mineral, cultural or historical feature, or public property on the Refuge, **unless authorized in writing by the Refuge Manager.**
5. Wildlife shall not be harmed or harassed and disturbance shall be kept to a minimum, this includes all snakes (poisonous and non-poisonous snakes), **unless authorized in writing by the Refuge Manager.**
6. The Refuge Manager should be contacted **immediately** at **(252) 473-1131** upon discovery of any **wildfire**, or any leak, spill, or break in a pipeline, power line, canal, or dike, or any other accident or incident that has the potential to have an adverse impact on the soil, wildlife, or plants in the area. Any unusual wildlife sightings or suspected illegal activities should be reported to the Refuge Manager.
7. Any accident that results in a personal injury (**i.e., an accident that requires professional medical treatment**) shall be reported to the Refuge Manager within 24 hours of the accident.
8. All **locked** Refuge gates shall be closed and locked upon entering and leaving Refuge property. Refuge gates should be left the way they are found (i.e., open, closed, either locked or unlocked as the case may be).

9. Vehicle travel shall only be on designated roads or routes of travel, **unless authorized in writing by the Refuge Manager**. Vehicles, boats, trailers, and other equipment shall be parked in such a manner that **roads and trails, including canoe trails and navigable waters, are not to be blocked**. Roads and trails need to be accessible to other Refuge visitors and to Refuge staff, cooperative farmers, fire trucks, emergency vehicles, maintenance equipment, and law enforcement patrols.
10. Vehicles with catalytic converters shall be restricted to paved roads, recently maintained gravel or dirt roads, or bare soil areas because of the high fire potential. Vehicles with catalytic converters shall not be parked over high vegetation or other fire hazardous materials.
11. Refuge gate or building keys **shall not be loaned** to other agencies, companies, or persons. If there is a need for access by other persons, please have them contact the Refuge Manager. All Refuge keys shall be returned to the Refuge Manager, or a designated staff member, within 10 calendar days, after expiration or termination of the Permit or authorized activity.
12. All dogs (or any other pet) must be confined or on a leash while on the Refuge, **unless authorized in writing by the Refuge Manager**. Leashed pets must be under the immediate control of the Permittee or authorized person, or the leash must be secured to a stationary object. The leash shall not be in excess of 10 feet in length.
13. Possession or use of firearms, air guns, bows and arrows, cross bows, spears, or gigs; or illegal knives, weapons, or devices; or explosives of any type is prohibited on the Refuge when engaged in a special use activity, **unless authorized in writing by the Refuge Manager**.
14. Littering is prohibited. **All** materials brought into the Refuge shall be removed and properly disposed. Drink cans, bottles, candy wrappers, toilet paper, and other garbage and refuse shall not be left on the Refuge.
15. The Refuge Manager shall be contacted **before** any surface work is done. This includes mowing, road or trail improvements, digging, clearing or trimming of brush or vegetation, installation of structures, etc.
16. The use of herbicides and pesticides on Refuge property is prohibited, **unless authorized in writing by the Refuge Manager**. Unrestricted, over-the-counter-type, insect repellents may be used on or near the body and clothing to repel biting or stinging insects.
17. No permanent or semi-permanent markings shall be made on any Refuge building, structure, gate, post, sign, fence, tree, vegetation, or soil by either marking, painting, cutting, scratching, blazing, mowing, digging, or other destructive method, **unless authorized in writing by the Refuge Manager**. When needed, only temporary, removable markers (e.g., flagging tape, survey stakes, metal/paper/plastic tags, etc.) shall be used to mark site locations, plots, etc. Safety signs, informational signs, and any other signs required by law or regulation for the special use activity being

conducted, shall be posted as required, **but only with prior authorization by the Refuge Manager.** All markers and signs shall be removed upon conclusion of the special use activity or upon expiration or termination of the Permit.

18. The use or possession of traps, snares, or other passive (i.e., unattended) collection devices, which are used to collect wildlife, is prohibited, **unless authorized in writing by the Refuge Manager.** Each individual trap, snare, or passive collection device shall have a weather-resistant, permanent tag attached with the Permittee's, authorized person's, and/or organization's name legibly marked on the tag **or** shall have the Permittee's, authorized person's, and/or organization's name legibly marked, imprinted, or engraved on the trap, snare, or device.
19. No permanent or semi-permanent fences, buildings, shelters, docks, piers, or other structures or facilities may be erected, built, or placed on the Refuge, **unless authorized in writing by the Refuge Manager.** No machinery, equipment, supplies, or materials may be placed or stored on the refuge, **unless authorized in writing by the Refuge Manager.**
20. All open fires are prohibited, **unless authorized in writing by the Refuge Manager.** Leaving an **authorized** open fire unattended or not completely extinguished is prohibited. Setting on fire or causing to be set on fire any timber, brush, grass, or other inflammable material, including camp or cooking fires, is prohibited, **unless authorized in writing by the Refuge Manager.** The use of cutting torches, arc welders, or any other open flame/sparking devices (which are required to conduct the special use activity) shall be exercised with caution and **only with prior authorization from the Refuge Manager or Refuge Fire Management Officer.** When use of these devices is necessary, the operator(s) shall have **immediate access to appropriate fire control equipment** (e.g., fire extinguishers, shovels, etc.) and **immediate communication access to local emergency services** (e.g., cellular telephone, two-way radio, etc.). Tobacco smokers shall practice caution when smoking; shall completely extinguish all matches, cigars, cigarettes, and pipes; and shall dispose of same in a proper container (e.g., a vehicle ash tray).

**SPECIAL CONDITIONS FOR BRIDGE CONSTRUCTION OVER PEA ISLAND (NEW) INLET**  
**PROJECT B-2500 PHASE IIa**  
**N. C. HIGHWAY 12 TRANSPORTATION MANAGEMENT PLAN**  
**Pea Island National Wildlife Refuge**  
**Attachment to Special Use Permit 2013-003**

1. Special Use Permit # 2013-003 is issued for the expressed and sole purpose of establishing temporary easements adjacent to the existing N. C. Highway 12 (NC 12) right-of-way (ROW) as a temporary measure to facilitate construction of a new bridge to replace the existing temporary bridge over the Pea Island Inlet in the vicinity of the historic New Inlet.
2. This permit does not authorize any activity other than the use of refuge lands for the expressed purposes stated in SUP# 2013-003. It is the permittee's responsibility to obtain any and all other necessary local, state, or federal approvals prior to commencing work activities. All other permits, approvals, or agreements, written or verbal, whether from individuals or local, state, or federal agencies or other entities shall be coordinated by NCDOT so as to not in any way interfere with implementation of the terms and provisions of SUP # 2013-003.
3. The effective dates of this permit include the period from September 16, 2013 through December 31, 2017. If it should become necessary to extend the effective period, a request for extension should be submitted no less than 5 days in advance. The Refuge Manager or designee shall be notified no less than 3 days prior to commencement of activities on the Refuge.
4. Activities authorized through this permit include reasonable and prudent work within the existing North Carolina Department of Transportation (NCDOT) ROW for the existing NC Highway 12 and those areas identified in pre-construction drawings as temporary easement areas for the purpose of maintaining safe traffic flow while preparing for and construction of a concrete replacement bridge to replace the temporary steel bridge. Care shall be taken so as to avoid harm to wildlife and fisheries resources, including their habitats.
5. Temporary work outside of the existing NC 12 ROW as described in project plans reviewed by the Refuge Manager is authorized to the extent necessary to complete construction of the replacement bridge and restoration of NC 12 in a safe and effective manner. This authorization is conditional upon full restoration of affected areas is completed to the satisfaction of the Refuge Manager or designee. Prior consultation with the Refuge Manager or designee is required for any additional temporary work outside of the existing ROW and not shown on the pre-construction drawings.
6. Special Use Permit 2013-003 is limited to the specific request for sufficient temporary easement for bridge construction at the "Pea Island Inlet" site
7. FHWA and NCDOT are asking for a temporary easement to perform such tasks related to overall construction such as erecting erosion control structures, placing temporary shoring, staging areas, and pipe placement. These actions would all be temporary in nature. FHWA asserts that this "easement" would be a temporary occupancy and thus not a "use" of the Refuge requiring approval under Section 4(f) of the Department of Transportation Act of 1966. FHWA cites the 4(f) implementing regulations at 23 C.F.R. 774.13(d), which set forth the criteria for a temporary occupancy.

- a. Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in the ownership of the land;
  - b. Scope of the work must be minor, i.e., both the nature and magnitude of the changes to the Section 4(f) property are minimal;
  - c. There are no anticipated permanent adverse physical impacts except as shown in Exhibit 1 attached to this permit, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;
  - d. The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and
  - e. There must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.
8. Special Use Permit 2013-003 does not convey any kind of recordable property interest.
  9. Special Use Permit 2013-003 shall be invalidated in the event of failure by NCDOT or FHWA to satisfactorily complete the environmental administrative record for compliance with full disclosure and permitting requirements.
  10. In the event of bird or turtle nesting activity within or adjacent to the project area as determined by the Refuge Manager NCDOT shall work with the contractor and incorporate remedial measures as recommended by USFWS to minimize or eliminate lighting, noise, or construction and associated activities. NCDOT shall be responsible for monitoring nesting activity as determined necessary by the Refuge Manager.
  11. Any and all temporary easement, staging, or other work areas on the Refuge shall be sloped, contoured, and re-vegetated to pre-work conditions or to the satisfaction of the Refuge Manager.
  12. Upon completion of construction, NCDOT shall address the issue of public access in the vicinity of New Inlet through the following measures:
    - a. The existing parking lot on the east side of the NC Highway 12 and closest to Pea Island (New) Inlet shall be fully removed along with all construction materials, including concrete, asphalt, contaminated soils, and any other material not naturally belonging on the site. A replacement parking lot shall be constructed and the kiosk shall be relocated/reconstructed at a new site near the northern terminus of the Phase IIb bridge. The site will be selected by the Refuge Manager with input from NCDOT upon completion of the Phase IIb Bridge.
    - b. The existing parking lot (New Inlet Parking Lot) and primitive boat access point on the west side of NC Highway 12 shall be fully restored upon completion of construction and an access drive similar to the one for the parking lot at the Bonner Bridge shall be constructed from the southern terminus of the new bridge to the New Inlet Parking Lot within the existing easement to the greatest extent possible. In order to minimize wetland impacts while providing safe ingress and egress from the boat access drive, NCDOT will be allowed to construct a turnaround on the east side of the existing easement, as well as a small area outside the easement on the west side of the existing easement, as depicted

on Exhibit 1. Upon project completion, the maintenance of the driveway and turnaround will be the responsibility of USFWS.

13. Permittee is responsible for removing any and all construction debris, materials, and equipment from the Refuge to the satisfaction of the Refuge Manager.
14. At the discretion of the Refuge Manager, a determination of failure to comply with all terms and provisions of SUP # 2013-003 shall result in revocation of the permit and removal of all fill and complete restoration of areas covered by temporary construction easements. Upon revocation or expiration of SUP # 2013-003, all debris, materials, vehicles, equipment, or other construction related items deemed by the Refuge Manager to be an un-natural addition to the refuge shall be removed within 30 days from receipt of notice of revocation or expiration of the permit.
15. Upon discovery of new ecological or biological information regarding fish, wildlife, or their habitats that could be affected by this project, the Refuge Manager retains the authority to amend this permit to protect natural resources in the interests of achieving the refuge system mission or the purpose for establishing the refuge.



NAD 83 NSRS 2007

100' EXISTING R/W

FISH HOOK

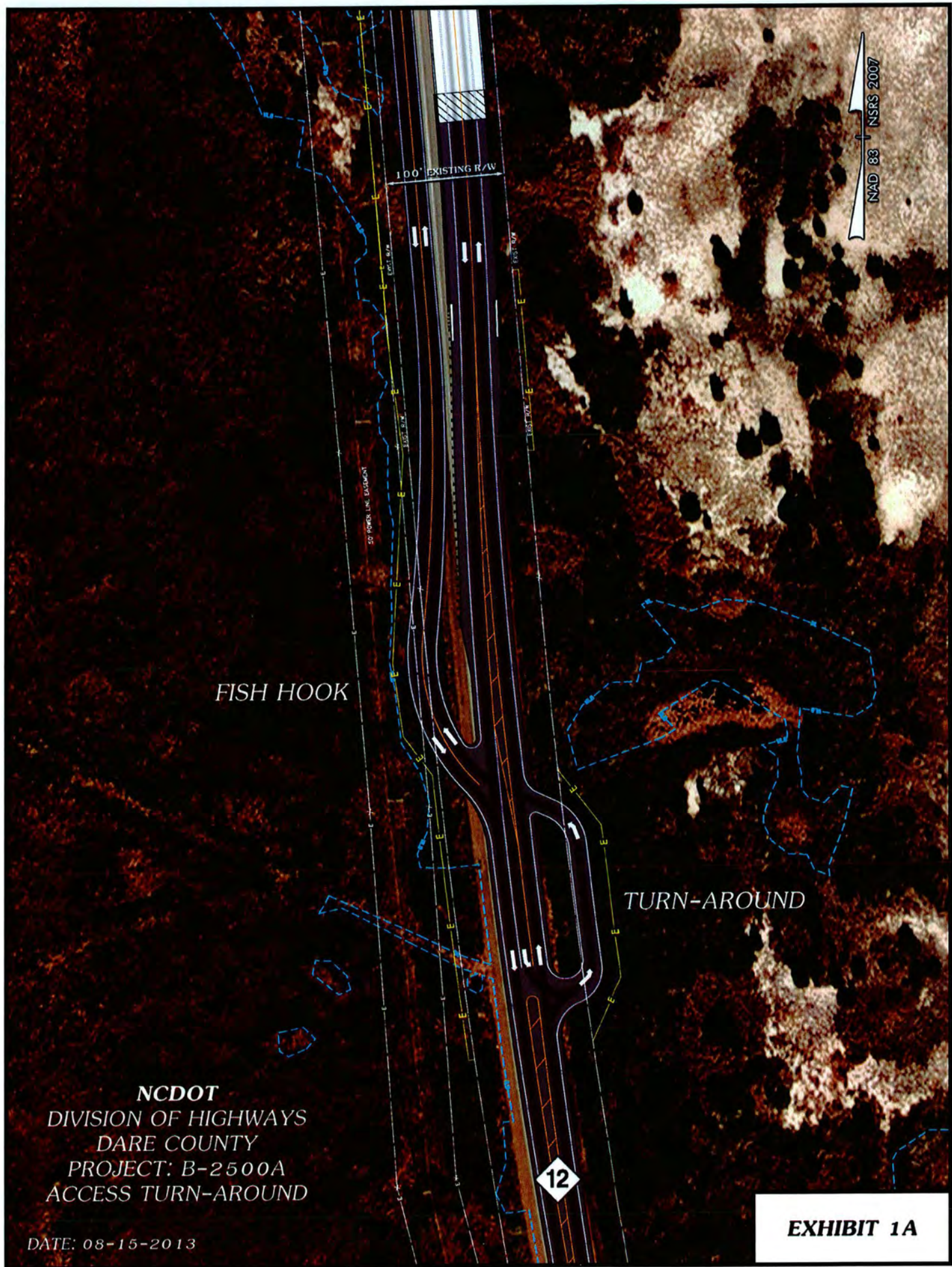
TURN-AROUND

**NCDOT**  
DIVISION OF HIGHWAYS  
DARE COUNTY  
PROJECT: B-2500A  
ACCESS TURN-AROUND

12

DATE: 08-15-2013

**EXHIBIT 1A**



100' EXISTING R/W

50' POWER LINE EASEMENT

FISH HOOK

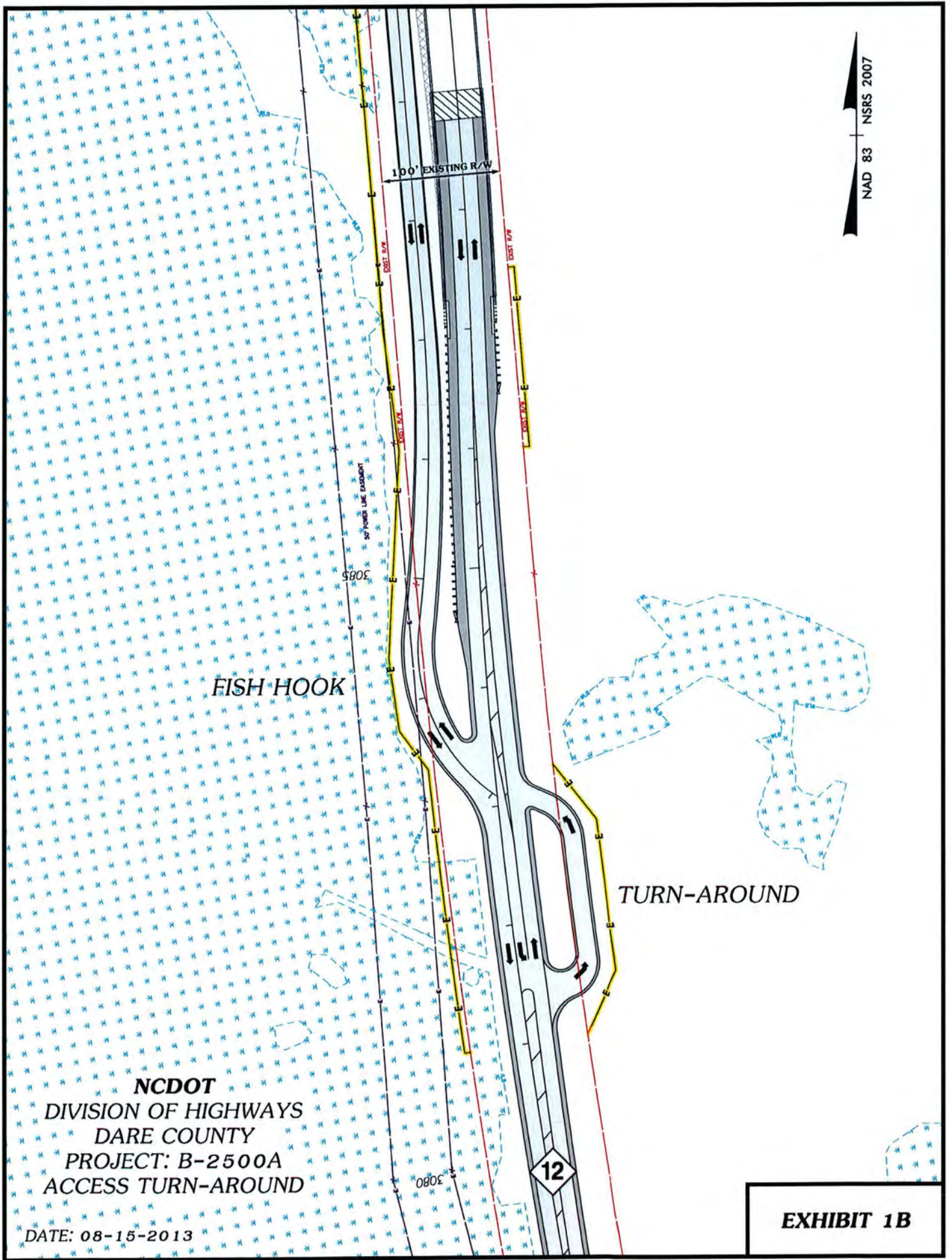
TURN-AROUND

12

**NCDOT**  
DIVISION OF HIGHWAYS  
DARE COUNTY  
PROJECT: B-2500A  
ACCESS TURN-AROUND

DATE: 08-15-2013

**EXHIBIT 1B**



U.S. Department of  
Homeland Security

United States  
Coast Guard



Commander  
United States Coast Guard  
Fifth Coast Guard District

431 Crawford Street  
Portsmouth, Va. 23704-5004  
Staff Symbol: dpb  
Phone: (757) 398-6557  
Fax: (757) 398-6334  
Email: James.L.Rousseau2@uscg.mil

16593  
1 MAY 2013

Mr. Gregory J. Thorpe, Ph.D.  
Manager, Project D & E Analysis Unit  
State of North Carolina Department of Transportation  
1598 Mail Service Center  
Raleigh, NC 27699-1598

Dear Dr. Thorpe:

Review of your proposed bridge project is complete. Based on the documentation provided and that four comments were received and resolved to Public Notice 5-1292 from the NC State Clearing House and the NC Division of Coastal Management it is determined that a formal Coast Guard bridge permit will not be required for the proposed replacement of the temporary bridge with a new bridge over the New Inlet or Pea Island Breach between Whalebone and Rodanthe near Oregon Inlet, Dare County, NC.

The project will be placed in our Advance Approval category as per Title 33 Code of Federal Regulations Part 115.70. This Advance Approval determination is for the location and proposed replacement of the temporary bridge with a new bridge across the New Inlet or Pea Island Breach and **is valid for five years from the date of this letter**. If the replacement does not commence within this time period, you must contact this office for reaffirmation of this authorization.

Future bridge projects along the same waterway will have to be independently evaluated before they may be considered for Advance Approval. The fact that a Coast Guard bridge permit is not required does not relieve you of the responsibility for compliance with the requirements of any other Federal, State, or local agency who may have jurisdiction over any aspect of the project. Although the project will not require a bridge permit, other areas of Coast Guard jurisdiction apply. The following must be met:

- a. At no time during the bridgework will the waterway be closed to navigation without the prior notification and approval of the Coast Guard.
- b. This office should be notified as soon as possible to commencement and completion of bridgework so that appropriate announcements may be prepared for our Local Notice to Mariners publication.
- c. The lowest portion of the superstructure of the bridge across the waterway should clear the 100-year flood height elevation, if feasible.

The National Ocean Service (NOS) of the National Oceanic and Atmosphere Administration (NOAA) is responsible for maintaining the charts of U.S. waters; therefore, they must be notified of this proposed work. You must notify our office and the NOS upon completion of the activity approved in this letter. Your notification of completion must include as-built drawings, which

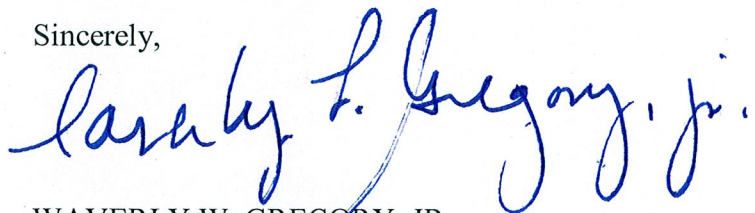
16593  
1 MAY 2013

certifies the location and clearance of the bridge that was constructed. This information will be sent to the following address:

Ms. Allison Wittrock  
National Ocean Service  
N/CS26, Room 7317  
1315 East-West Highway  
Silver Spring, MD 20910-3282

If you have any further questions, please contact Jim Rousseau at the above-listed address or telephone number.

Sincerely,

A handwritten signature in blue ink that reads "Waverly W. Gregory, Jr." in a cursive style.

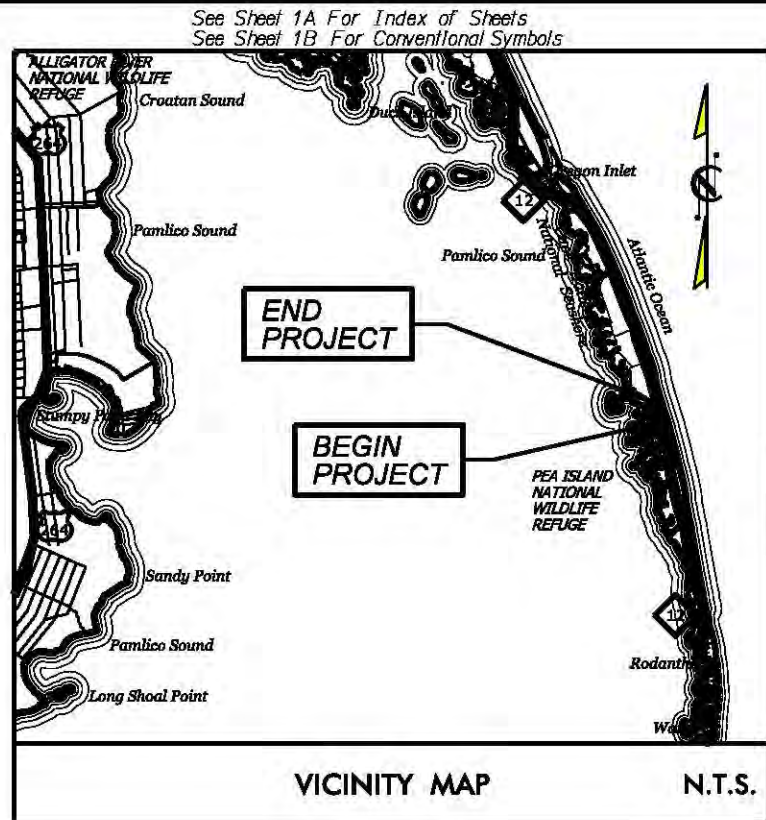
WAVERLY W. GREGORY, JR.  
Bridge Program Manager  
By direction of the Commander  
Fifth Coast Guard District

Copy: Sector North Carolina, Waterways Management  
Ms. Allison Wittrock, NOS

09/08/99

**TIP PROJECT: B-2500AB**

**CONTRACT:**



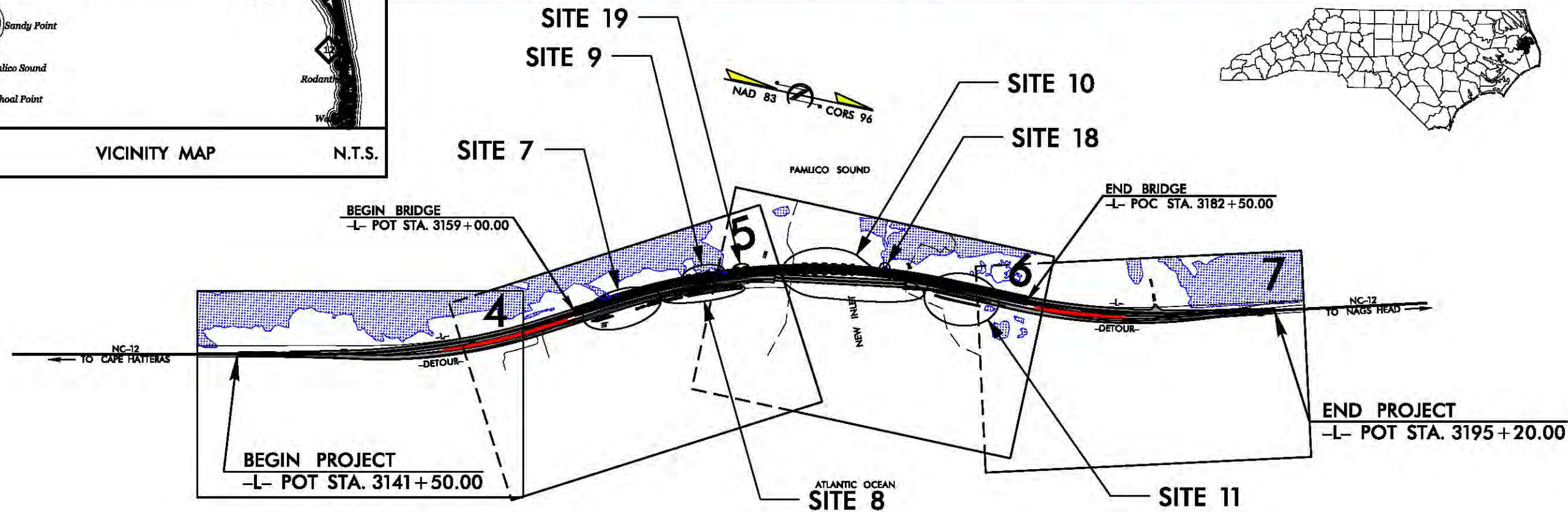
STATE OF NORTH CAROLINA  
DIVISION OF HIGHWAYS  
**DARE COUNTY**

**LOCATION: PHASE II, NC-12 SHORT-TERM IMPROVEMENTS AT PEA ISLAND**  
**TYPE OF WORK: GRADING, PAVING, DRAINAGE & STRUCTURE**

**WETLAND AND SURFACE WATER IMPACTS PERMIT**

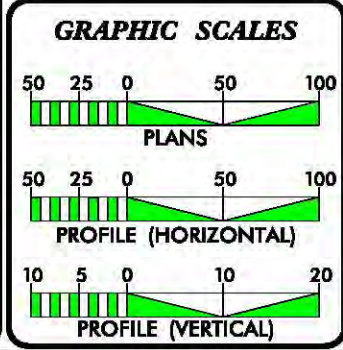
STATE	STATE PROJECT REFERENCE NO.	SHEET NO.	TOTAL SHEETS
N.C.	B-2500AB	1	
STATE PROJ. NO.	F.A. PROJ. NO.	DESCRIPTION	
		P.E.	
		CONSTR.	

**PERMIT DRAWING  
SHEET 1 OF 12**



\* RECOMMENDED POSTED 45 MPH

INCOMPLETE PLANS  
DO NOT USE FOR R/W ACQUISITION  
PRELIMINARY PLANS  
DO NOT USE FOR CONSTRUCTION



**DESIGN DATA**  
(B-2500A DATA)

ADT 2012 =	7,300
ADT 2032 =	10,900
K =	N/A %
D =	N/A %
T =	6% **
* V =	55 MPH
** (TTST 1%, DUAL 5%)	
FUNC CLASS =	COLLECTOR
REGIONAL TIER	

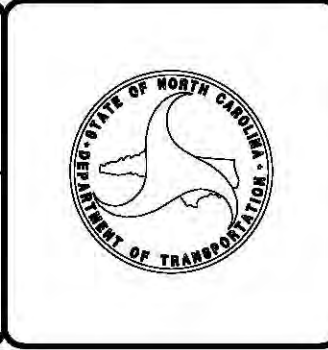
**PROJECT LENGTH**

LENGTH ROADWAY TIP PROJECT B-2500AB =	0.572 MILES
LENGTH STRUCTURE TIP PROJECT B-2500AB =	0.445 MILES
<b>TOTAL LENGTH TIP PROJECT B-2500AB =</b>	<b>1.017 MILES</b>

Prepared in the Office of:  
**DIVISION OF HIGHWAYS**  
1000 Birch Ridge Dr., Raleigh, NC 27610

2012 STANDARD SPECIFICATIONS	
RIGHT OF WAY DATE:	NA
LETTING DATE:	
	GARY LOVERING, PE PROJECT ENGINEER
	CHRISTOPHER H. LEE PROJECT DESIGN ENGINEER

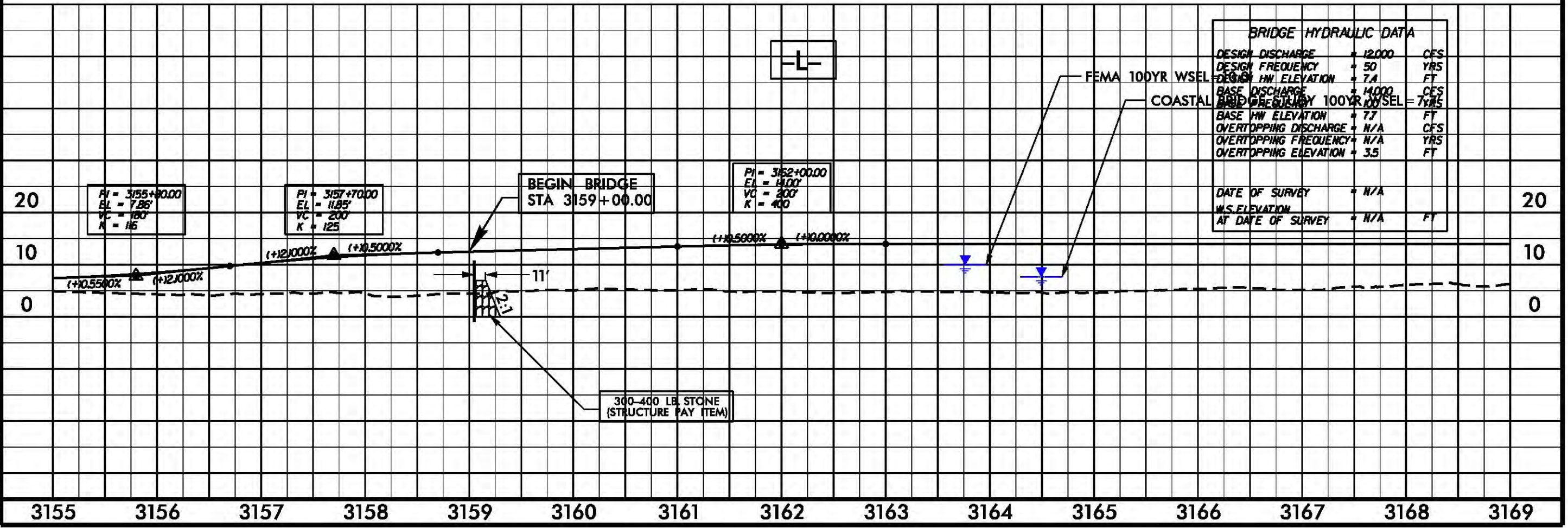
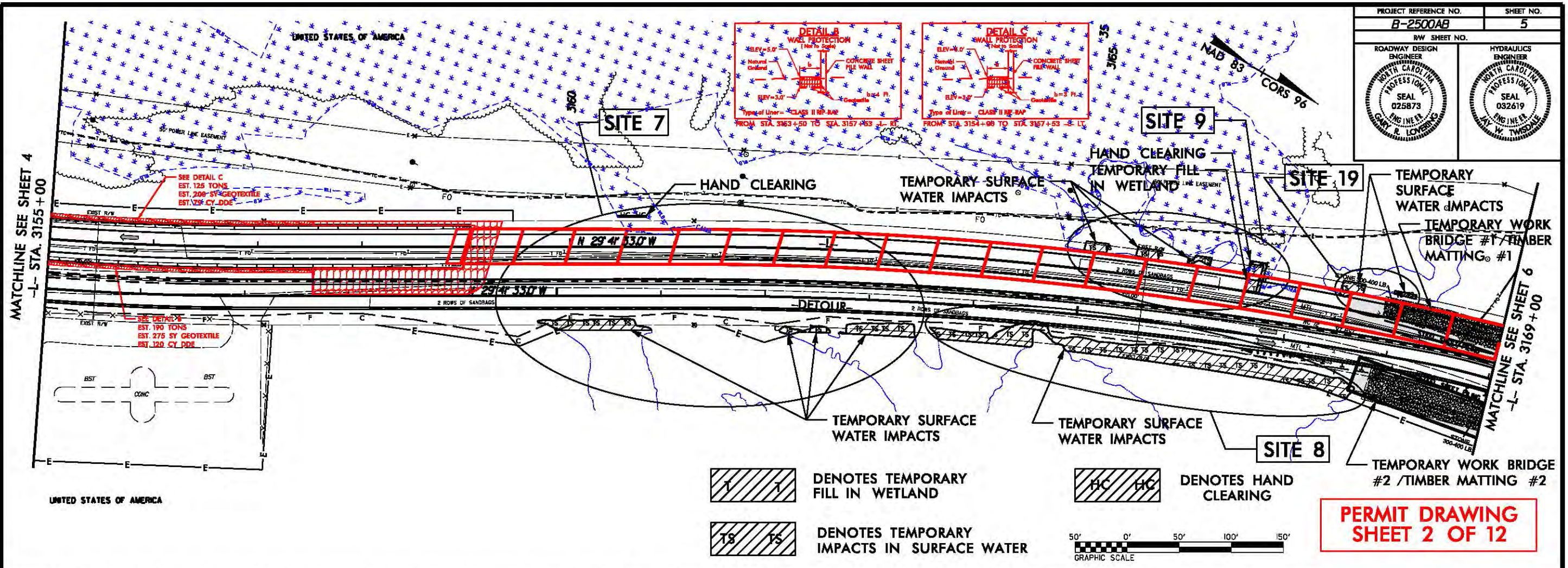
HYDRAULICS ENGINEER	
SIGNATURE:	P.E.
ROADWAY DESIGN ENGINEER	
SIGNATURE:	P.E.



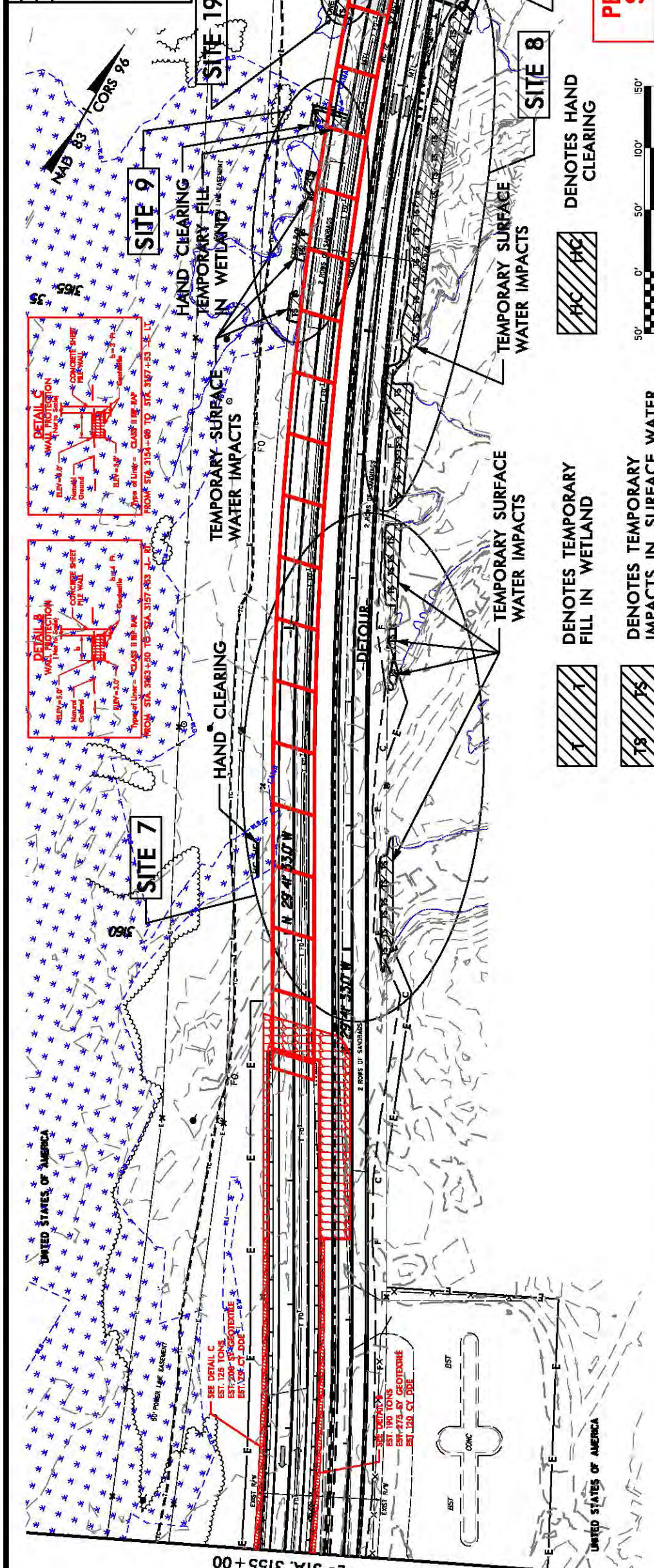
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8/17/99

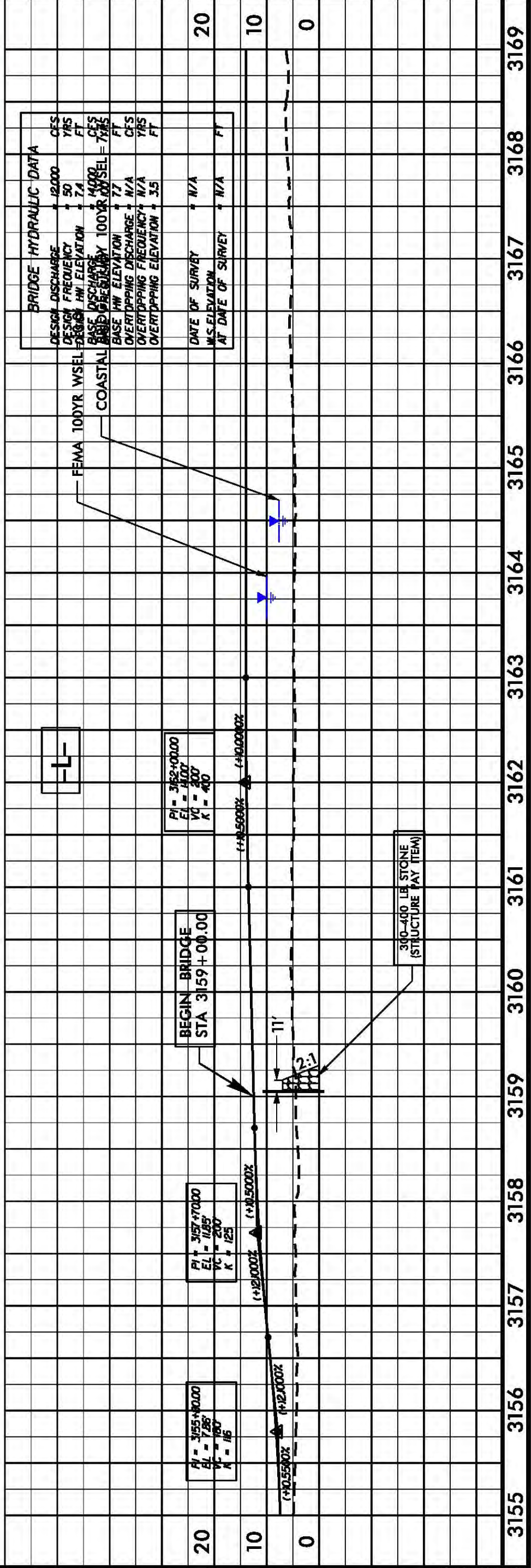
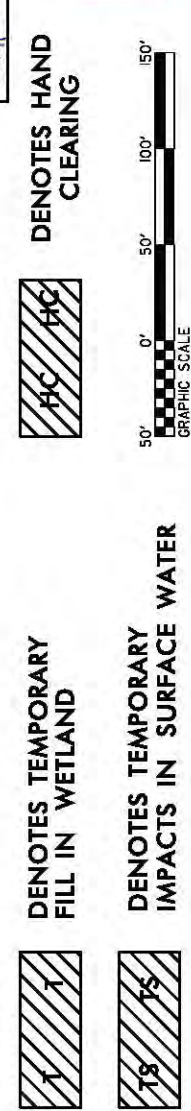
PROJECT REFERENCE NO. <b>B-2500AB</b>	SHEET NO. <b>5</b>
ROADWAY DESIGN ENGINEER NORTH CAROLINA PROFESSIONAL SEAL 025873 GARY B. OVERBERG	HYDRAULICS ENGINEER NORTH CAROLINA PROFESSIONAL SEAL 032619 W. WINDSOR



7/15/2015  
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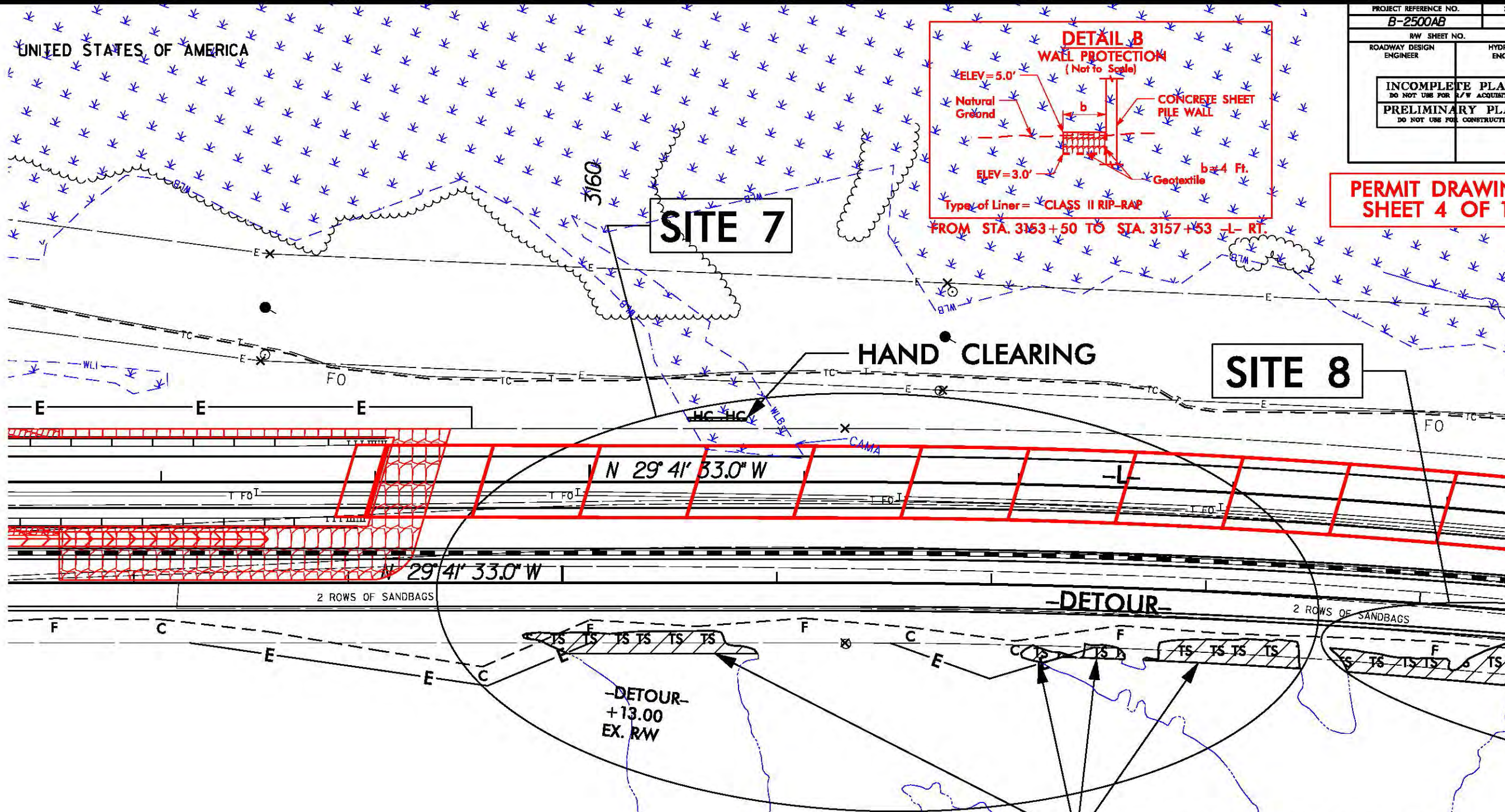


**PERMIT DRAWING SHEET 3 OF 12**



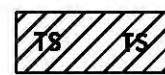


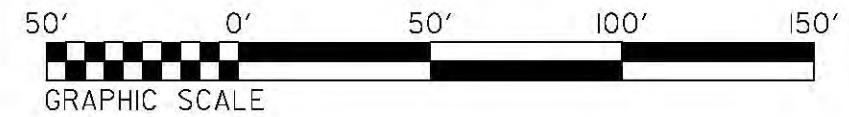
8/17/99

PROJECT REFERENCE NO. <b>B-2500AB</b>	SHEET NO. <b>5</b>
R/W SHEET NO.	
ROADWAY DESIGN ENGINEER	HYDRAULICS ENGINEER
<b>INCOMPLETE PLANS</b> DO NOT USE FOR R/W ACQUISITION <b>PRELIMINARY PLANS</b> DO NOT USE FOR CONSTRUCTION	



**PERMIT DRAWING**  
**SHEET 4 OF 12**

-  DENOTES TEMPORARY FILL IN WETLAND
-  DENOTES HAND CLEARING
-  DENOTES TEMPORARY IMPACTS IN SURFACE WATER

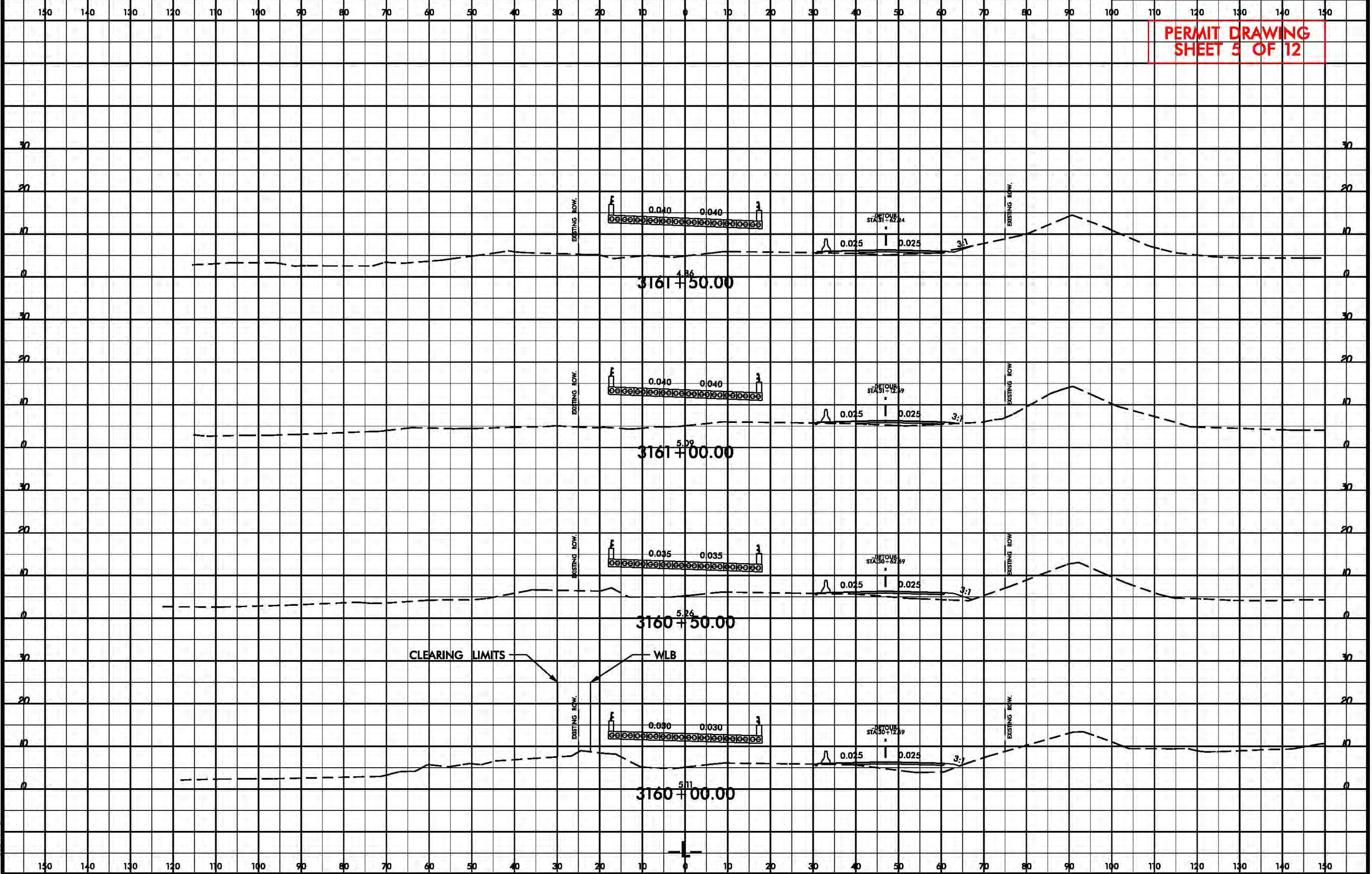


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6/23/09

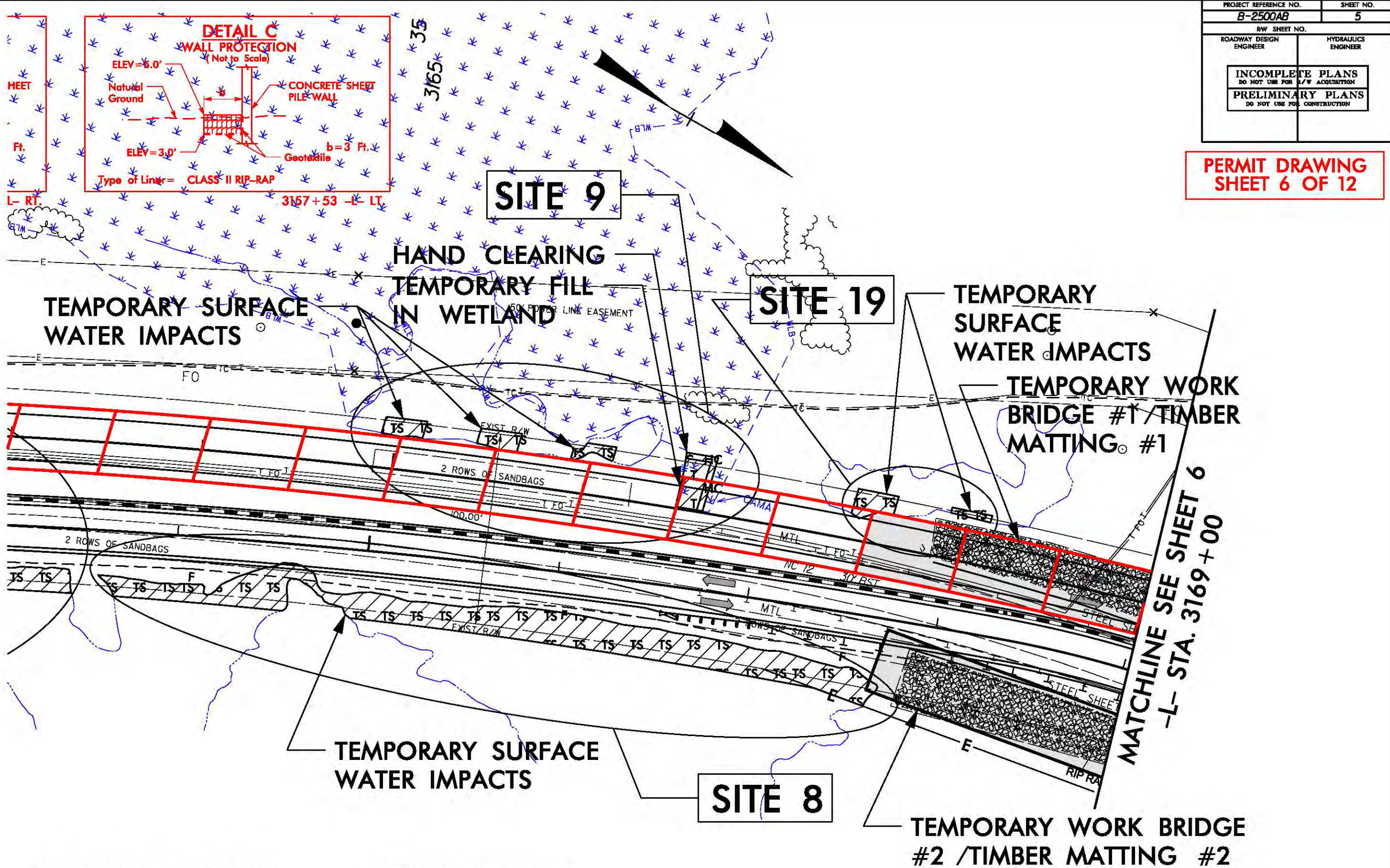
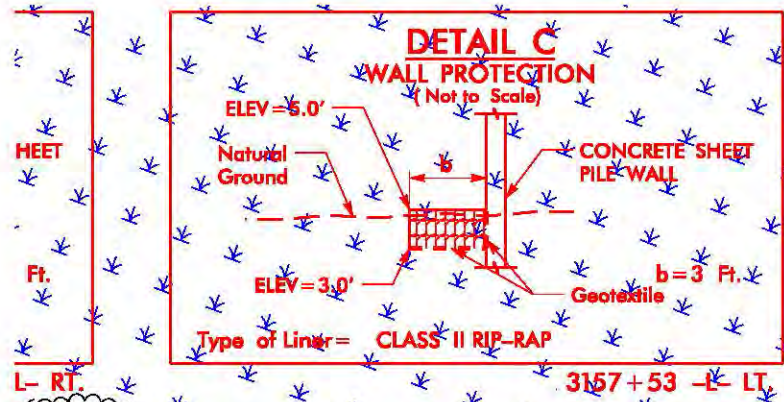
**PERMIT DRAWING  
SHEET 5 OF 12**



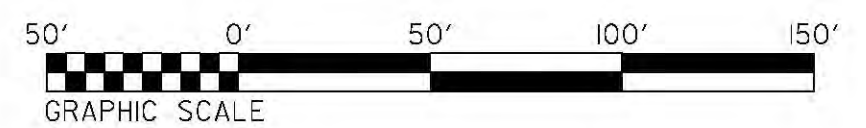
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PROJECT REFERENCE NO. <b>B-2500AB</b>	SHEET NO. <b>5</b>
RW SHEET NO.	
ROADWAY DESIGN ENGINEER	HYDRAULICS ENGINEER
<b>INCOMPLETE PLANS</b> DO NOT USE FOR R/W ACQUISITION <b>PRELIMINARY PLANS</b> DO NOT USE FOR CONSTRUCTION	

**PERMIT DRAWING  
SHEET 6 OF 12**



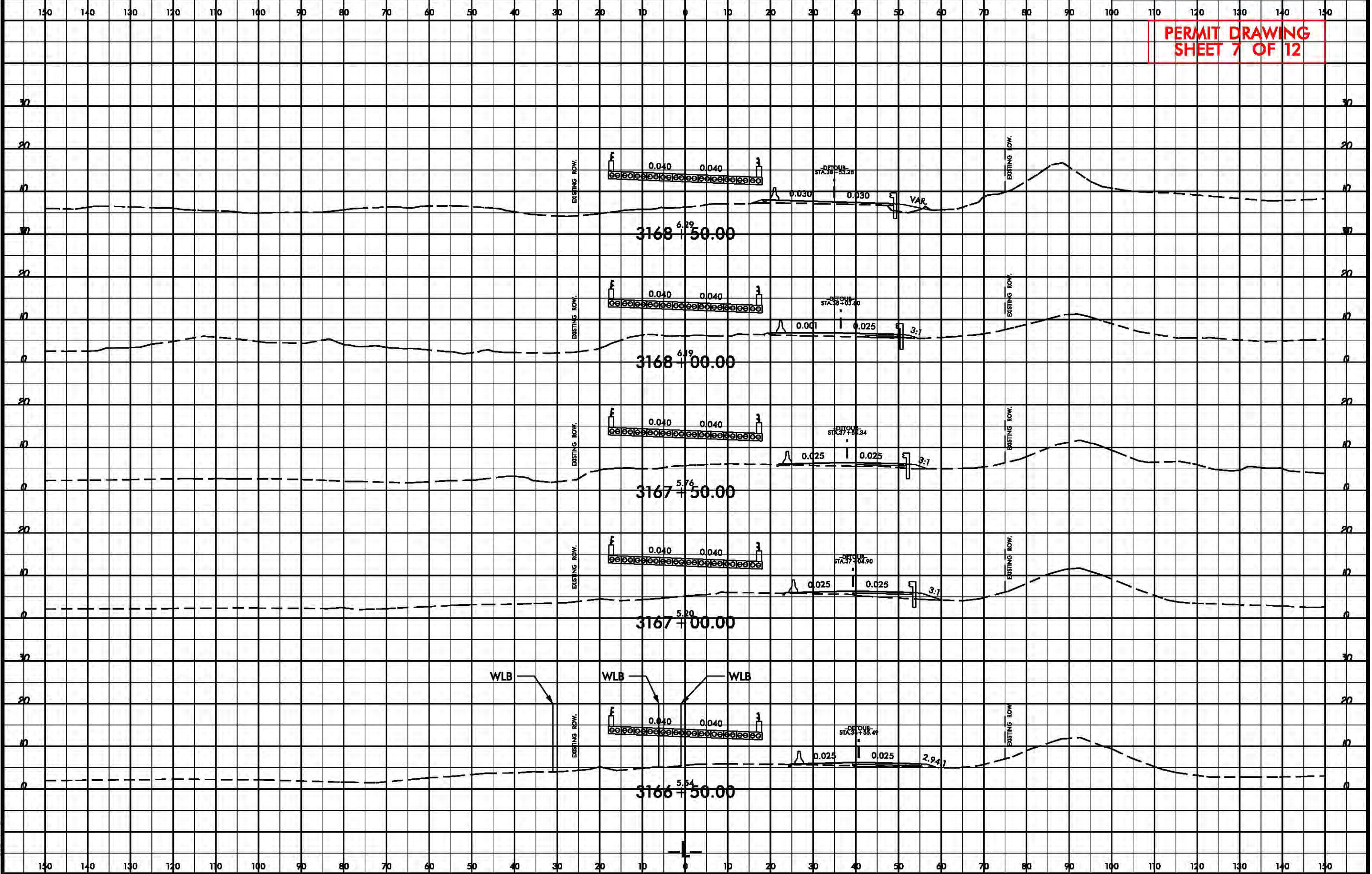
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	DENOTES TEMPORARY IMPACTS IN SURFACE WATER		



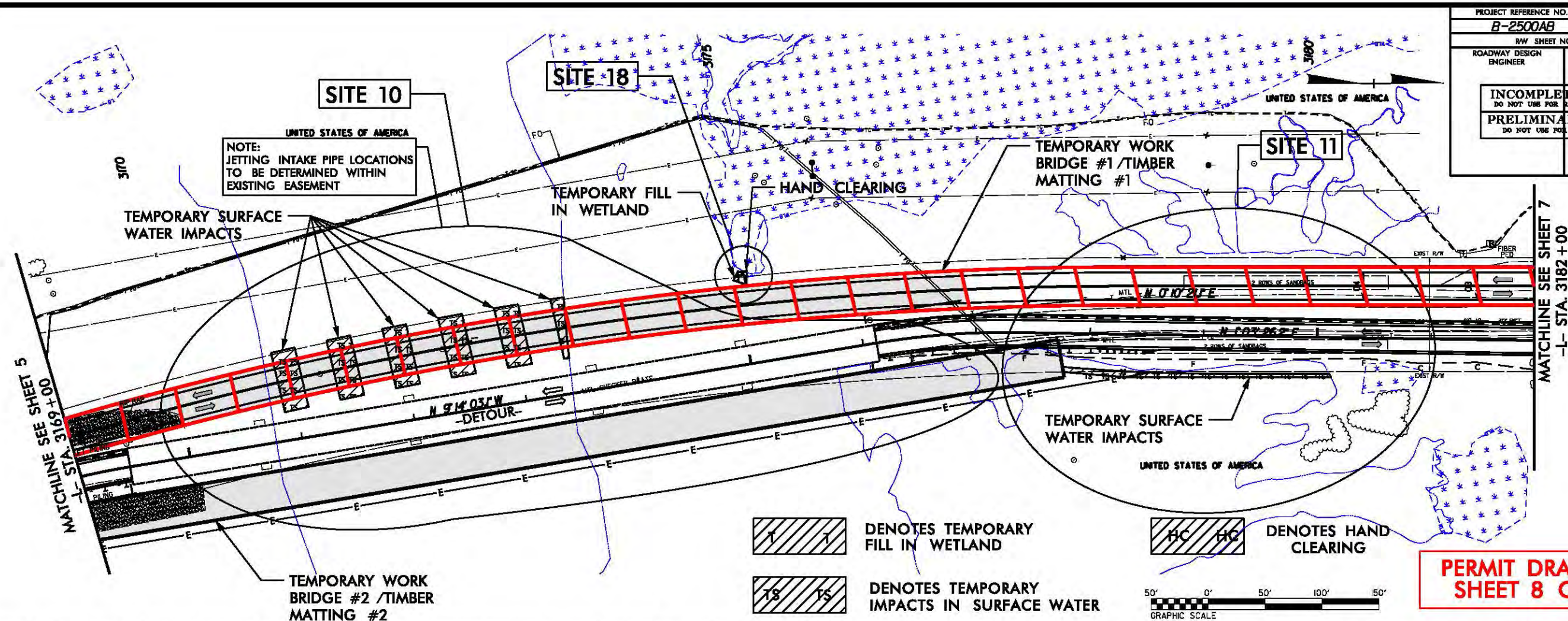
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 Plot Date: 6/18/2015 10:58:58 AM  
 Plot Scale: 1:1

6/23/09

**PERMIT DRAWING  
SHEET 7 OF 12**



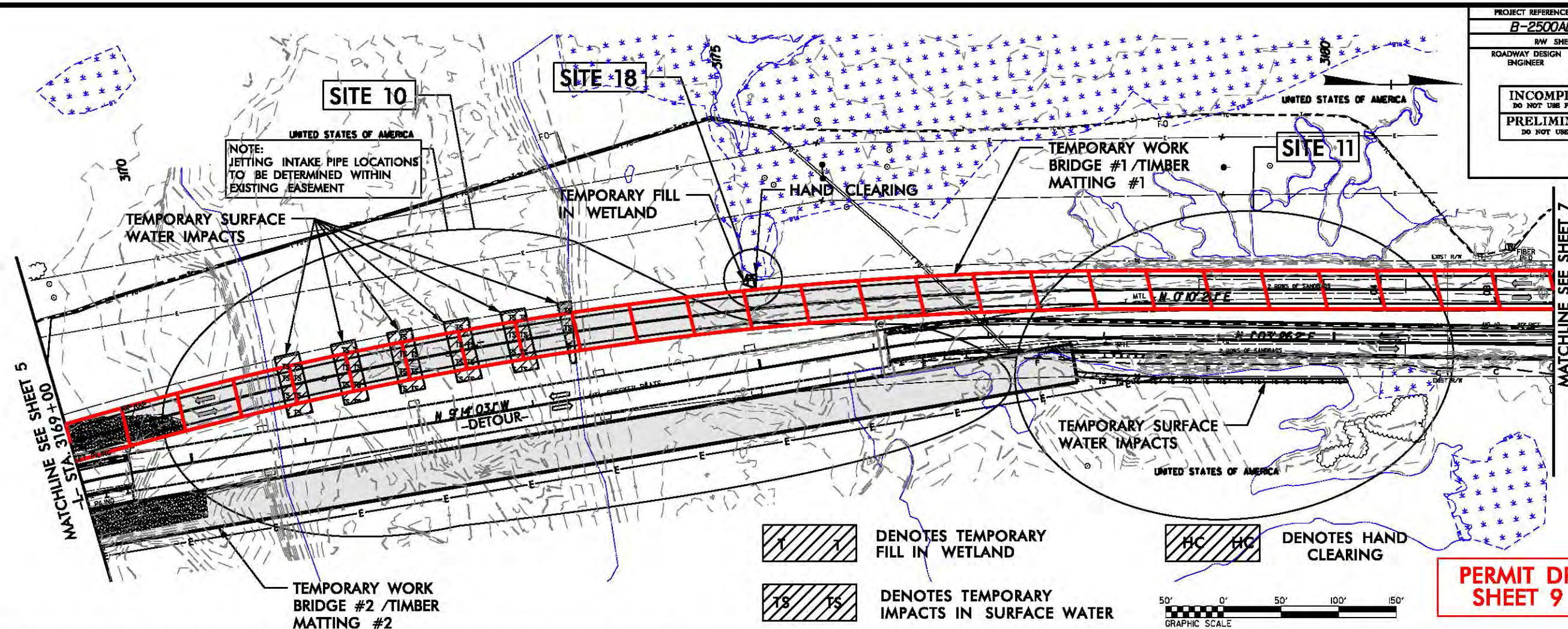
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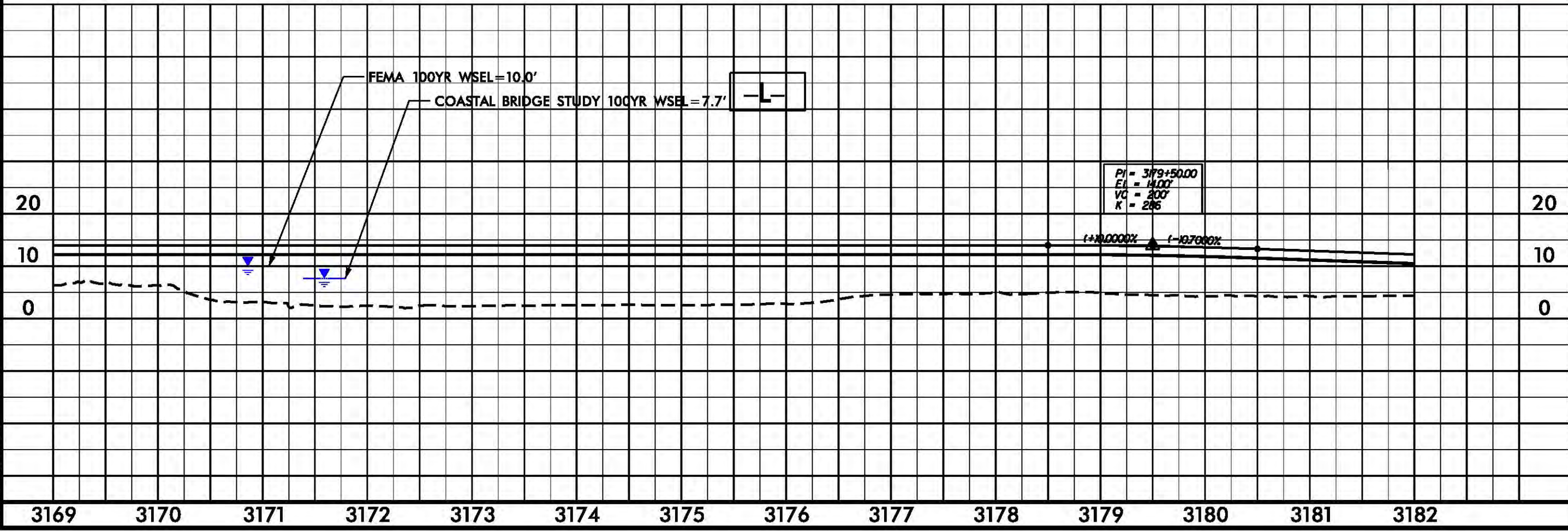
PERMIT DRAWING  
SHEET 8 OF 12



PROJECT REFERENCE NO. <b>B-2500AB</b>	SHEET NO. <b>6</b>
RW SHEET NO.	
ROADWAY DESIGN ENGINEER	HYDRAULICS ENGINEER
<b>INCOMPLETE PLANS</b> DO NOT USE FOR R/W ACQUISITION <b>PRELIMINARY PLANS</b> DO NOT USE FOR CONSTRUCTION	



**PERMIT DRAWING**  
**SHEET 9 OF 12**



6/18/2015  
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PROJECT REFERENCE NO. <b>B-2500AB</b>	SHEET NO. <b>6</b>
RW SHEET NO.	
ROADWAY DESIGN ENGINEER	HYDRAULICS ENGINEER
<b>INCOMPLETE PLANS</b> DO NOT USE FOR R/W ACQUISITION <b>PRELIMINARY PLANS</b> DO NOT USE FOR CONSTRUCTION	

PERMIT DRAWING  
SHEET 10 OF 12

SITE 10

SITE 18

**NOTE:**  
JETTING INTAKE PIPE LOCATIONS  
TO BE DETERMINED WITHIN  
EXISTING EASEMENT

**TEMPORARY SURFACE  
WATER IMPACTS**

**TEMPORARY WORK  
BRIDGE #1 /TIMBER  
MATTING #1**

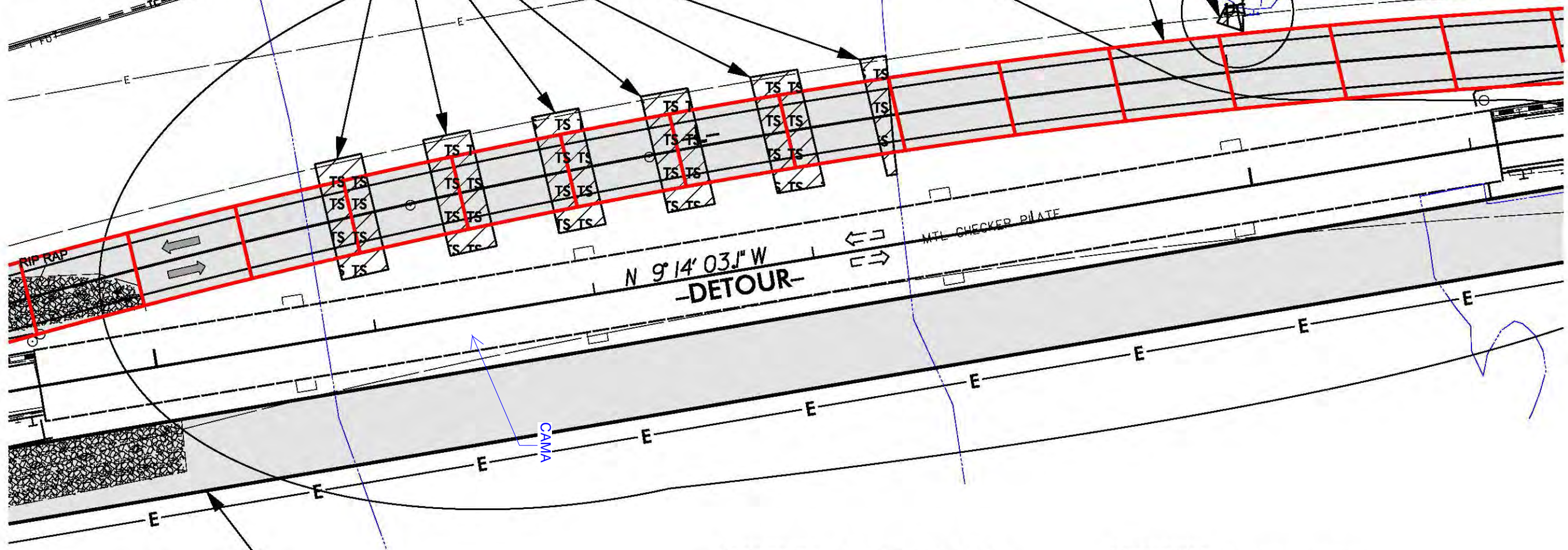
**HAND CLEARING**

**TEMPORARY SURFACE  
WATER IMPACTS**

UNITED STATES OF AMERICA

3170

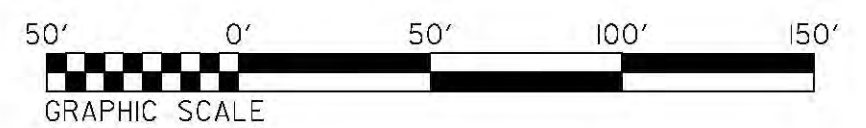
3175



**TEMPORARY WORK  
BRIDGE #2 /TIMBER  
MATTING #2**

- DENOTES TEMPORARY FILL IN WETLAND
- DENOTES TEMPORARY IMPACTS IN SURFACE WATER

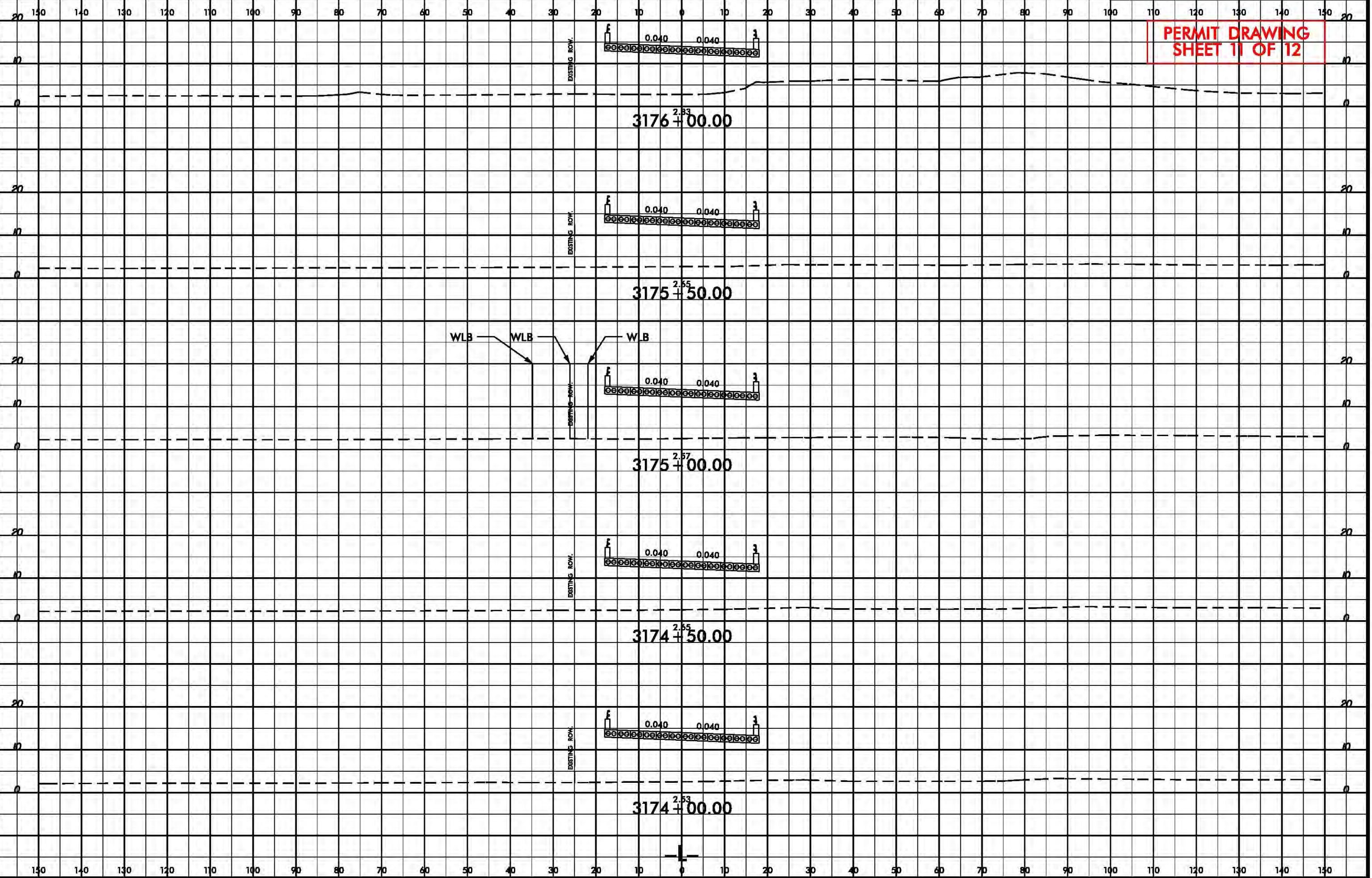
- DENOTES HAND CLEARING



6/7/2015  
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 \*\*\*\*\*UN\*\*\*\*\*

6/23/09

**PERMIT DRAWING  
SHEET 11 OF 12**



6/15/2015  
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 Title: [unreadable]

WETLAND PERMIT IMPACT SUMMARY												
Site No.	Station (From/To)	Structure Size / Type	WETLAND IMPACTS					SURFACE WATER IMPACTS				
			Permanent Fill In Wetlands (ac)	Temp. Fill In Wetlands (ac)	Excavation in Wetlands (ac)	Mechanized Clearing in Wetlands (ac)	Hand Clearing in Wetlands (ac)	Permanent SW impacts (ac)	Temp. SW impacts (ac)	Existing Channel Impacts Permanent (ft)	Existing Channel Impacts Temp. (ft)	Natural Stream Design (ft)
7	-L- 3159+69 to 3163+36	Bent # 3 & Detour Road						< 0.01		0.04		
8	-L- 3163+50 to 3167+72	Detour Road								0.13		
9	-L- 3164+92 to 3166+68	Bent # 12, 13, 14, 15		< 0.01				< 0.01		0.01		
10	-L- 3170+74 to 3177+14	Bent # 24, 25, 26, 27, 28, 29								0.14		
		*Proposed Bridge										
		**Work Bridge #1										
		***Work Bridge #2										
		****Remove Existing Bridge										
		Jetting Intake Pipe										
11	-L- 3177+84 to 3180+22	Detour Road								0.02		
19	-L- 3167+41 to 3168+13	Bent # 17, 18								< 0.01		
18	-L- 3174+98 to 3175+11	Bent # 32		< 0.01				< 0.01				
TOTALS*:				< 0.01				< 0.01		0.35	0	0

\*Rounded totals are sum of actual impacts

NOTES:

- \* Permanent impacts due to the proposed bridge are 89 SF of total impact. (< 0.01 ac for all permanent bents)
  - \*\* Temporary work bridge # 1 is 950' long and 33.5' wide, between Bent 17 at Station 3167+50 -L- and Bent 36 at Station 3177+00 -L- and will be constructed in the footprint of the proposed bridge.
  - \*\*\* Temporary work bridge #2 is about 990' long and 33.5' wide and will be constructed east of the Mabey bridge
  - \*\*\*\*Remove Existing Bridge (6 Footings @ 130 SF = 780 SF Total Impact)
- All wetland impacts occur in CAMA wetlands.

NC DEPARTMENT OF TRANSPORTATION  
 DIVISION OF HIGHWAYS  
 6/18/15  
 DARE COUNTY  
 B-2500AB  
 32635.1.3  
 SHEET 12 OF 12